Dwarves of Dispute Settlement?

EXAMINING THE FACTORS OF SMALL STATE SUCCESS IN THE WTO DISPUTE SETTLEMENT MECHANISM

A thesis submitted in fulfilment of the
requirements for the Degree of Master of Arts in
Political Science and International Relations

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UNIVERSITY OF CANTERBURY

2021

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Acknowledgments

First, I would like to thank my supervisors Professor Alex Tan and Dr Serena Kelly for their invaluable insights and support during this project.

I would also like to thank those who donated their time and expertise to be interviewed for this project and gave the important insights necessary to complete this thesis.

Further, I am extremely thankful to have received the Barbara Kathryn Ell Travel Award which allowed me to travel to complete these interviews

Lastly, I would like to thank all the friends and family who supported me. Especially my mum, Kim, and my partner, Moritz, who kept me sane for the last year.

Abbreviations

Abbreviation	*Meaning*
AB	Appellate Body
ACWL	Advisory Centre on WTO Law
DSB	Dispute settlement body
DSM	Dispute settlement mechanism
DSU	Dispute Settlement Understanding
FTA	Free Trade Agreement
GATT	General Agreement on Tariffs and Trade
HCI	Human Capital Index
IMF	International Monetary Fund
LDC	Least Developed Country
MFN	Most favoured nation
MPIA	Multi-Party Interim Appeal Arbitration Arrangement

RTA	Regional Trade Agreement
US	United States of America or United States
WTO	World Trade Organisation

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Abstract

This research examines how small states can better utilise the dispute settlement mechanism of the World Trade Organisation to gain better outcomes for their state against larger states. Studies of small states have largely been neglected in Political Science research at large, but especially regarding the World Trade Organisation, despite the increased importance of trade for small states due to a greater reliance on exports and the international system. As such, this thesis aims to provide a greater understanding of the factors for success for small states in the DSM as well as a series of clear guidelines and recommendations for small state policymakers in how to increase their chances of success.

Through a series of expert interviews, this research shows the importance of a legal and economic capacity, the Coalition Effect, a preference for other trade forums, the current Appellate Body Crisis, retaliatory capacity, political constraints and the internal infrastructure and co-ordination of the small state in determining small state success in the World Trade Organisation's dispute settlement mechanisms.

Chapter One: Why Dispute Settlement?

There is a huge amount of research studying the World Trade Organisation (WTO) and its dispute settlement mechanism (DSM). The importance of the mechanism to the working of not just the WTO, but world trade and trade liberalisation cannot be overstated, with almost 100% of world trade flows being represented in the membership of the WTO (Guzman & Simmons, 2005) (Peet, 2009, p. 190). The WTO is seen as the gold standard for international law and trade, but it also exemplifies the issues that we face in such forums, as such it is an excellent subject of study (Messenger, 2016, pp. 9-11). The values of the WTO are non-discrimination, openness, transparency, competition, benefit to less developed countries, and environmental protection (World Trade Organization). Through these values, the WTO provides vital benefits for small states (Nottage, 2009, p. 1). Most prominently is the goal of liberalising trade, as small states are generally more reliant on trade than medium and large states, due to their export-oriented economies (Bailes & Thorhallsson, 2017, p. 53) (Hansen, 2021, 1 September). Therefore, having liberalised trade is relatively more important to their economic prosperity (Bailes & Thorhallsson, 2017, p. 53) (Hansen, 2021, 1 September). Further, as a small state, they have very little leverage in bi- and trilateral negotiations (Anderson & Wincoop, 2003, p. 183). As such, being included in such forums, where consensus is required, and therefore theoretically a small state has the ability, through the DSM, to challenge large states when they have potentially breached their WTO obligations is a monumental victory for small states. However, there is very little research into how small states have used this mechanism, how effective they are, and how they can be more effective in their disputes. As such, this thesis attempts to fill this hole in the literature surrounding small states and the DSM. Ideally, this research will be able to inform the literature into what factors make small states more or less successful in their disputes and also be of use to the policymakers of small states. With this research problem and context in mind, this thesis will shed light on what factors, if any, determine the success of small states in WTO disputes against large powers?

This research concludes that the main factors in small state success are the legal and economic capacity of the state. Further significant factors are access to the ACWL, utilisation of the Coalition Effect, preference for other trade forums, the ongoing Appellate Body (AB)

crisis, the retaliatory capacity of the state, political constraints, and the internal infrastructure and coordination, of the small state.

Significance of Research

This research is very important for two primary reasons. Firstly, it helps to fill the gap in the dispute settlement literature. Primarily, by introducing research that looks at a more well-defined small state and how small states interact with large states in the dispute settlement mechanism, which, as will be discussed, is sorely lacking. Additionally, while there is some literature on outcomes of disputes, there is little to no literature that defines success with a state-centric approach. As such, this research will be unique in discussing what factors are significant for the success of the complainants, and not for the success of the world system of free trade and liberalisation.

The second primary reason that this research is important is the significance it has for small states, both in the development of the small state literature and in creating paths to better-informed disputes for small state policymakers. The dispute settlement procedure itself is extremely important for small states by giving them a voice in issues of international trade, where they are supposedly able to hold their own with larger states (Nottage, 2009, p. 1). As such, testing whether this is actually the case is very relevant to whether or not the WTO can be used as an effective organisation for economic shelter. Further, the importance of trade to the economic prosperity of small states means that if small state policymakers had a better understanding of what factors could make their disputes more successful, and therefore gaining better economic outcomes, it could have an important impact on the economic prosperity of their small states (Bailes & Thorhallsson, 2017). As such, this research has both theoretical and practical significance.

Limitations of Research

The most significant limitation to this research is that it is not always clear who has won a dispute, and it is common for complainants to win on some, but not all, of their complaints

in a dispute (Holmes, Rollo, & Young, 2003). In an attempt to mitigate this, this research will examine not only WTO documentation but a wide range of sources to determine success. I further have proposed to have three categories of success (successful, partially successful, and unsuccessful). One issue that can't be mitigated against in this research is the fact that there is most likely a high number of cases that do not reach the dispute settlement process and this should be taken into account and more research should be completed into this issue in regard to small states (Holmes et al., 2003, p. 7) (Horn, Mavroidis, & Nordström, 1999, p. 4) (Busch & Reinhardt, 2002, p. 460).

Further, this research will not be differentiating between different types of small states, for example, microstates and small island states. Small developing states are discussed, though not in-depth. This is a deliberate choice, as the focus of this study is looking at small states as a whole to gain greater generalisability and a starting point for more the small state literature. However, this must be noted as there are significant differences between many small states, and this should be considered when judging the applicability of these results to different contexts. It is also an important avenue for future research.

Definitions

One of the areas that is most lacking in the relevant literature is a sufficient definition of what constitutes small statehood, as such I will discuss this, alongside what is considered a middle and large state and what success looks like in the context of this research.

What is a Small State?

The importance of properly defining small states cannot be exaggerated. As will be discussed, this area is where much of the literature is lacking, as where the literature does discuss small states, they generally provide no clear definition and the measures they use to signify small statehood are often unsuitable. This research will utilise a definition of small states which is aimed at helping to rectify this issue in the literature.

Objective values of rank have been largely featured in many traditional definitions of small states, as will be seen with the use of GDP, population, territory size, and military capability as measures in the literature. However, small states can vary drastically in such measures, particularly GDP, and these cannot fully capture the complexity of what it means to be a small state (Bailes, Thayer, & Thorhallsson, 2016). Having said that, these areas can be a good starting point when looking at a definition. For example, some scholars have argued for a population cut off of 10-15 million for developed small states and 20-30 million for developing small states (Vital, 2006, p. 81). I have used this as a rough guideline. Further, GDP is also a useful, but not sufficient, measure of small statehood, in terms of small states having smaller economies and market sizes. The biggest departure I will take here is instead of using GDP per capita, which is common in the small state literature, I have looked at total real GDP. As, GDP per capital only serves to show how rich the country is, not the actual size of the economy. Again, GDP has been used as a rough guideline with most small states sitting under $250,000 million (constant 2015 US$). However, the key point here is that while these measures are important and useful, they are not sufficient in defining small states and any numbers related to these shouldn't be used as a hard and fast rule in defining small statehood.

One important feature of many small states, and perhaps the most sketched out in the literature, is that they tend to have limited control over their security. This can be economic, political, physical or societal security (Bailes et al., 2016, p. 12). Small states tend to have a greater reliance on trade than many larger and middle states. This is because they tend to have smaller domestic markets than larger states, which means that they are more reliant on exports and imports (Bailes et al., 2016, pp. 13-14). They are also more likely to be reliant on fewer numbers of exports, often just one or two, due to concentrated production (Bailes et al., 2016, pp. 13-14). As a result, their economies are much more fragile as they rely more heavily on international trade and are much more vulnerable to fluctuations in the market and economic crises and therefore have little control over their economic security (Bailes et al., 2016, p. 14).

Further, because these states are small, they have smaller economies, resources, and militaries they also tend to have less political weight in the world, because they have less capacity to follow through on any threats against states larger than themselves (Fox, 2006,

pp. 47-48). As such, they have less leverage in many diplomatic scenarios, especially those involving middle and large states (Bailes et al., 2016, pp. 12-13). As a result, their soft power is much smaller than that of middle and large states and is usually regulated to only regional contexts (e.g., New Zealand in the South Pacific) or certain issues/industries (e.g., Estonia or Israel in cyber security) (Väyrynen, 1971). As a result, they are more vulnerable to political pressure and influence than larger states and thus have much less control over their political security (Fox, 2006, p. 41). Additionally, because small states tend to have less capacity (both economic and human capital capacity) they often have a small and/or weak military, which often leads to a reliance on middle and large powers for physical security purposes and limited control over their physical security (Fox, 2006, pp. 47-48). Lastly, their smaller average populations lead to a lack of expertise and increased likelihood of societal stagnation and look and lack of innovation (Bailes & Thorhallsson, 2017, p. 54) (Thorhallsson, 2019, p. 386). This means they are more reliant on the free movement of people and transfer of information and therefore have less control of their own societal security (Bailes & Thorhallsson, 2017, p. 54) (Thorhallsson, 2019, p. 386). As such, this lack of autonomy around security is a prominent feature of many small states.

Another feature of small states is their international involvement. This is difficult because often it is difficult for small states to be involved in international organisations due to capacity constraints. But those who do have the capacity to involve themselves, tend to involve themselves as much as possible, and often more than one might expect for such a small state (Park & Jakstaite-Confortola, 2021, pp. 1278-1280). This is likely due to the disproportionate gain that small states get from such organisations (Bailes et al., 2016, p. 3). For example, small states will benefit more from involvement and successful functioning of the WTO than larger states, as not only does it perpetuator a culture of multilateralism that is useful to small states, but it helps to facilitate freer trade, which disproportionately benefits small states who rely heavily on trade and allows for small states to have a greater voice than they would in any bilateral negotiations so they can negotiate more favourable terms (Bailes et al., 2016, pp. 13-14) (Fox, 2006, pp. 47-48). Further, it creates a mechanism allowing them to dispute actions made by larger states, which in most other cases is impossible for small states.

Further, perception is an important aspect of small statehood. This includes the perception a state has of itself, whether it considers itself to be a small or middle state, as well as the perception that other states have of them (Bailes et al., 2016, p. 12) (Rothstein, 1968, p. 29). Small states often look to larger states for recognition of their status and increased reputation through their affiliation (Park & Jakstaite-Confortola, 2021, pp. 1278-1280) (Pedersen, 2018, pp. 217-218). As such, small states might be more likely to involve themselves in conflict or international organisations alongside their larger allies in the hopes of gaining their favour (Park & Jakstaite-Confortola, 2021, pp. 1278-1280) (Pedersen, 2018, pp. 217-218). As such, this sort of behaviour can be indicative of small statehood, partially because when states behave like this in the international system, they often perceive themselves to be small states (Rothstein, 1968, p. 29). Further, we can look to involvement in small state organisations such as the Small States Forum or the Alliance of Small Island States to indicate that a state perceives itself as small.

One caveat to take into account is that is it clear that not all small states are made equal. That is, Lichtenstein and Iceland are not going to be facing similar levels of constraints from their small statehood, and while further research into microstates is needed, this is not within the scope of this research. As such, this disparity should be considered with this definition and with the results of this research.

The last point that is not necessarily a feature of small states, but important to mention when discussing the definition of small states is development level. This is as, traditionally small states have been seen as weak states, as such this often meant that developing states were automatically considered small. While this perception is changing in the literature, it is still important to note that this isn't accurate. Brazil or China can hardly be seen in the same league as Lichtenstein or New Zealand despite their lower development levels. As such, for this definition, we do consider development level, in that developing states and LDCs do need a higher threshold for rank measures of small statehood, as you can see in the earlier discussion around GDP and population. However, this does not extend to the more subjective measures of small statehood, which in many ways are more important. As such, development level is a factor to be aware of and to take into account when defining small statehood, it should not be considered synonymous with small or 'weak states’.

This, admittedly loose, definition of small states has a more nuanced approach than more objective measures and it is this approach that is desperately needed in the literature, not just taking one of these aspects and saying that is a small state, all of them are needed to accurately define small states. While this definition is perhaps this thesis' greatest strength and contribution to the literature, it is also a weakness, as it is of course somewhat subjective. With this in mind, perhaps most important to take away from this is that small states are not just large states but smaller. Their smallness comes with complexities and uniqueness that makes them fundamentally different from middle and large states and that means that there will always be ambiguities about who can be considered small and that this may change, especially with context. To see which states are considered small in the WTO context see Figure 6. This means that any study which includes small states needs to take this into account if it wants to have any hope of accurate results.

What is a Large State?

For the context of this research, the terms large state or power are used to describe states who have large resources, such as a large economy, military, populations, territory size, and other traditional measures of the size and power of a state (Fox, 2006, p. 40). However, perhaps more important, is that that they are used to describe states that are seen as, or see themselves as, hegemons, either by international or regional standards. These states will usually have significant autonomy over their security in order to be considered a great power (Handel, 2006, p. 181). Another important feature of hegemons is that they are states that have significant political and cultural influence in other states, some prominent examples include the United States of America (USA or US) and the People's Republic of China (China or PRC) (Jones, 2009). This also includes the European Union (EU), as, though they are not a state, they wield significant state-like powers, and most importantly for this thesis, they act as one state in their disputes at the WTO. This is mainly due to the customs union that the EU has which makes its trade policy a unified common policy, making both the EU and EU member states members of the WTO (European Commission) (World Bank Group, 2004). As such, for this research, the EU will be considered a large state, but its member states are not when they act as an individual state in the dispute settlement mechanism.

Another important point is that, for the purposes of this research, BRICS states (Brazil, Russia, China, India, and South Africa) are considered large states due to the importance of their emerging economies, and the fact that each of them has large regional influence, as well as significant global influence (though some more than others) (Tarp & Hansen, 2013, p. 6). They certainly tend to perceive themselves, and act in their foreign policy, as large powers (Tarp & Hansen, 2013, p. 6). The United Kingdom (UK) is excluded as a large state though there is certainly an argument for this, however, because they only left the EU officially in January of 2020, almost all of the data, disputes, and experience of the experts interviewed are with the UK as part of the EU (EUR-Lex, 2021). This may change in coming years.

What is a Middle State?

Though middle states are not heavily discussed in this research, it is important to briefly look at what we consider a middle state to be. Middle states are essentially states that aren't quite large states, in that they don't have the same level of resources, in terms of their economy, military, populations, territory size etc, but also that they have much less influence and power than large states (Carr, 2014, pp. 71-72) (Cooper, 2011, p. 319). As such, they aren't able to entirely hold their own in the international system but do have a greater ability to influence other states and world events than small states do (Cooper, 2011, p. 319). However, these measures, both traditional and less traditional, still put them far above small states, they still have larger economies, militaries, and populations than small states typically do (Carr, 2014, pp. 71-72). As such, they are less vulnerable to fluctuations in the market and stagnation in innovation compared to small states. They do tend to lean on larger powers or international organisations, or coalitions, for security, but don't have such a reliance on them as small states do, as such they have greater levels of autonomy than small states do (Carr, 2014, pp. 73-74). Like small states, the perception of themselves as middle states, as well as others' perception of them as middle states, can also help to define middle statehood (Carr, 2014, pp. 75-76) (Keohane, 2006, p. 59).

What is success?

This research will take a state-centric approach, in that success is when the small state is able to constrain the undesirable action(s) of the larger state. As such, deciding success will be determining if the settlement or panel/appellate decision actually changed the behaviour of the larger state to the satisfaction of the small state. This research uses three categories of success; successful; the large state stopped its undesirable actions. Partially successful; the large state partially stopped their undesirable actions or stopped some of their undesirable actions but not others or the large state stopped its undesirable actions but did so after such a long time (5+ years) that the economic damage has already been done. Unsuccessful; the large state did not stop its undesirable actions. As such, in answering this question, this research examines the actual outcomes, not necessarily just what was reported to the WTO or the ruling that was issued. This research looks to Hudec (1993) benchmark study on WTO disputes as a guide for this.

Methods

The primary research method used for this thesis is qualitative data based on interviews conducted with officials who are or have been, engaged with the DSM in some way. This was primarily through semi-structured interviews with officials from state's delegations to the WTO, mostly small states. As well as interviews with an official from the ACWL and a lawyer from a large international law firm that acts as external counsel in disputes. Overall, 11 people were interviewed out of over 60 people that were contacted and each interview lasted between 30 minutes and 2 ½ hours.

As these were semi-structured interviews, they focused on a set of around 7-10 open-ended questions most of which were the same for each interview (see Appendix 3). Though some were tailored to the person, for example when speaking to someone from a developing state, questions about their developing states were asked. Semi-structured interviews were chosen to allow for additional and follow up questions. Interviewees were also guaranteed confidentiality to facilitate more open and earnest conversations.

The reason that interviews were chosen as the primary form of data collection is because it is very difficult to get reliable data on the barrier of small states in dispute settlement to

conduct an empirical analysis. This is for two main reasons. Firstly, because it is likely that small states often do not initiate disputes even if there is enough evidence of a breach of WTO disputes, due to many of the barriers that will be discussed. This is backed up by the fact that small states have only been complainants in 18.48% of disputes compared to 31.52% for middle states and 51.98% for large states.[1] This is especially obvious when considering the fact that, according, the definition used in this thesis, large states only make up 4.27% of WTO members, middle states 18.29%, and small states 77.44%, see Figure 4, Figure 5, and Figure 6. Some look to trade flows to answer why this is the case for developing states (Guzman & Simmons, 2005, p. 592). However, when considering that large states account for 28.05% of world imports and 26.66% of world exports, compared with 40.82% of imports and 38.35% exports for middle states, and 25.04% of imports and 27.97% of exports for small states it would indicate that there are more factors than simply trade flow at play here.[2] This is also supported by some scholars who argue that smaller economies tend to initiate fewer disputes than would otherwise be expected (Bown, 2005, p. 291).

Secondly, is because is it quite possible, and according to this research likely (see Retaliatory Capacity and Political Constraints for further discussion), that small states are not getting optimal outcomes even when they do engage because they are more likely to settle without optimal outcomes. As such, it is clear that a more qualitative approach is needed to get a true understanding of the barriers to successful participation in the DSM.

Further, interviews were particularly useful when speaking to those who represent small states, as often the voices of small and developing states are not heard when undertaking such research, and as such interviews can help to get an in-depth understanding of the barriers that they face.

Of course, the use of interviews has its disadvantages as well, particularly regarding the relatively low number of interviewees, the subjectiveness of the analysis and the general fallibility of people in comparison to empirical analysis. However, despite this, the benefits outweighed the disadvantages for the purposes of this thesis. This is compounded by the

[1] Numbers calculated from WTO dispute data

[2] Numbers calculated from WTO dispute data and The World Bank (2021b)

general consistency of the content of the interviews with few areas of disagreement between interviewees adding to its validity.

Despite this, some data analysis is used as a complement to the information gained through interviews. This research utilised an elimination strategy of case selection in an attempt to increase internal validity by reducing researcher bias. First, by taking all disputes that have been filed under the WTO, this was 606 cases. Next, any disputes that did not have a large state as a defendant was eliminated. Next, any case that did not have a small state as a complainant was eliminated. Next, any dispute that did not have a clear outcome was excluded. This resulted in 28 disputes meeting the criteria (see Appendix 2). These cases were then used to look at economic capacity using GDP as a proxy, and human capital capacity, using the Human Capital Index (HCI) as a proxy.

In regard to determining if an outcome has been reached disputes with the following statuses according to the WTO were included:

- Authorisation to retaliate granted.
- Authority for panel lapsed.
- Compliance proceedings completed with finding(s) of non-compliance.
- Compliance proceedings completed without finding of non-compliance.
- Implementation notified by respondent.
- Mutually acceptable solution on implementation notified.
- Report(s) adopted, no further action required.
- Report(s) adopted, with recommendation to bring measure(s) into conformity.
- Settled or terminated (withdrawn, mutually agreed solution).

Though there are cases that were “in consultations”, that had been so for many years, some since 1995, indicating that they are, for whatever reason, unwilling to request a panel, but also unwilling to withdraw the dispute. This could be treated as an outcome; however, they were excluded from this research for simplicity and clarity in outcomes.

Determining success

The last important aspect in the subsequent analysis of cases is the outcome of the dispute. The definition of success is particularly important due to the noted lack in the literature of

state-centric definition of success, this aspect as such is an important contribution to the literature. When it is clear, either by government documents or other research, that a large power has halted the undesirable actions, or made changes to their legislation to withdraw the disputed measure, this is considered success. To be clear, the WTO ruling in the case is irrelevant to this definition of success. That is, if they rule against a small state complainant, saying that the measures implemented by the defendant were not inconsistent with their obligation under the WTO, and consequently, defendants make no changes to their actions, this is still considered unsuccessful. As, even though the DSB has ruled that they were not inconsistent, and therefore could be considered a success of the DSU, it still means that the small state was unsuccessful in constraining the undesirable actions of the larger state, even if those actions were not necessarily illegal. Further, in cases where small states have made a suggestion, or request, to the panel or appellate body, for how a defendant can bring the measures ruled against into conformity, even when the panel or AB do not follow this request if the small state's request for implementation is not taken, then this is considered unsuccessful.

Thesis Structure

This chapter has outlined the problem, importance, limitations, and definitions of this research. The next chapter will give an understanding of the history and function of the WTO and its dispute settlement mechanism.

The third chapter is a thorough literature review of the relevant subjects, primarily focusing on the literature surrounding the WTO dispute settlement mechanism and small state-specific literature. This focuses on theories around dispute initiation, the outcome of disputes, the effectiveness of sanctions, and third parties. It will then discuss the limitations of this portion of the literature. The small state literature will discuss defining and describing small states, small state trade literature, and small state security, particularly Alliance Theory, and Shelter Theory. As well as the limitations of the small state literature.

Chapters four through six will be a thorough discussion of the factors which impact the success of small states in the DSM followed by recommendations on how these factors can be best addressed or utilised so that small states can be more successful. Chapters four and five will discuss the legal and economic capacity of small states, with these factors having

the greatest impact on success for small states. Chapter six will discuss the additional factors that are can impact on a small state's success, this includes their ability to utilise the ACWL, use of the Coalition Effect, the Appellate Body (AB) crisis, retaliatory capacity, small state preference for alternative trade forums, political constraints, and internal infrastructure and co-ordination of small states. Chapter seven will conclude with summary of the conclusions and avenues for further research.

Chapter Two: The World Trade Organisation and its Dispute Settlement Mechanism

This chapter will give a brief overview of the World Trade Organisation (WTO) and its dispute settlement mechanism (DSM). It will start with an overview of the history of the WTO and the DSM. Then it will explain how the DSM functions, with an overview of the stages of the process, an explanation of the role of third parties and the changes from the General Agreement on Tariffs and Trade (GATT) to the WTO. This will give the necessary background allowing a greater understanding of the barriers facing small states in using this process.

History of the World Trade Organisation

In 1947 the GATT was signed as the first step towards greater liberalisation, non-discrimination and transparency in world trade (Peet, 2009, p. 182). This agreement was fairly limited in scope, particularly as it covered only goods and not services (Peet, 2009, p. 182). Despite this, it included twenty-three countries and covered about a fifth of the world's total trade (World Trade Organization). This meant a general reduction of tariffs, as well as this reduction of tariffs being non-discriminatory so that any most-favoured-nation (MFN) agreements must apply equally to all members (Peet, 2009, p. 182). Between 1947 and 1994 the GATT held many rounds of negotiations and thousands of tariff reductions were agreed to, perhaps most impactful were the Kennedy, Tokyo, and Uruguay Rounds (Peet, 2009, pp. 183-184). This started with the Kennedy Round in the mid-1960s which produced the GATT Anti-Dumping Agreement and included a portion on development (World Trade Organization). This was followed by the Tokyo Round in the 1970s which focused on reducing non-tariff barriers and included 102 countries (World Trade Organization). It also resulted in custom duties being reduced by around a third (World Trade Organization). The last completed round was the Uruguay Round in the 1980-1990s (World Trade Organization). In 1994, the Uruguay Round was concluded, potentially the most impactful round of negotiation (Peet, 2009, p. 185). It resulted in many new trade agreements such as the General Agreement on Trade in Services (GATS), the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs), and the Agreement on Trade-related Aspects of Investment Measures (TRIMS) (Peet, 2009, pp. 185-189) (Schwartz & Sykes, 2002, p. 179). These three agreements in particular had massive consequences by

hugely increasing the scope of the GATT (Peet, 2009, p. 159). It was with the conclusion of the Uruguay Round and on the 1st January 1995 that the WTO formally came into existence (Reinhardt, 2000, p. 4). The current round of negotiations is the Doha Round which was launched in 2001 and has still failed to be completed (World Trade Organization). Today the WTO has 164 members and covers around 98% of world trade (World Trade Organization). It is arguably the most important institution for ensuring the longevity and security of the multilateral world trade system (Latif, 2007, p. 448).

History of the Dispute Settlement Mechanism

The initial framework for the WTO dispute settlement procedure was set up with the signing and ratification of the GATT 1947 (Cottier & Elsig, 2011, p. 1). This did not set up the dispute settlement procedure, however (Reinhardt, 2000, p. 3). Over time dispute settlement was slowly formalised, especially in the 1950s, 1966 and 1979, and importantly the 1989 Improvements to the GATT Dispute Settlement Rules and Procedures (Reinhardt, 2000, p. 4). The 1989 Improvements were so significant because they created rules around the unilateral veto and created greater assistance for developing states to be able to utilise the process, as well as the right to a panel being enshrined in law and unable to be vetoed (Busch, 2000, p. 426) (Reinhardt, 2000, p. 4). But it wasn't until the establishment of the WTO in 1995 that we saw the true formalisation and codification of the dispute settlement procedure (Reinhardt, 2000, p. 4) (Nzelibe, 2005, p. 215). This was particularly due to the creation of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) (Guzman & Simmons, 2005, p. 560) (Kohona, 1994, p. 23) (Schwartz & Sykes, 2002, pp. 179-180). This document created what most see as the formal dispute settlement procedure of the WTO, and it eliminated the unilateral veto, as well as establishing an appellate process, and shortened the timeframe for filing disputes (Bown, 2004b, p. 813) (Reinhardt, 2000, p. 4). The DSU also created the Dispute Settlement Body (DSB), which is the agency that manages the WTO's dispute settlement mechanism (Kohona, 1994, p. 23). This is the body that formally adopts reports to make them considered international law, each member state has a vote in the DSB (Latif, 2007, p. 449) (Pauwelyn, 2000, p. 336). Fundamentally the DSB is the same as the WTO council but is governed under different rules, with a different chairperson, and has a different title (Latif, 2007, p. 449).

Functioning of the Dispute Settlement Process

The mechanism has several distinct stages, starting with the consultations stage, if this stage fails to conclude the dispute, it will move onto the panel or adjudication stage which, if appealed, with go to the appellate stage and then onto the implementation state (Bütler & Hauser, 2000, pp. 506-509) (Horn et al., 1999, p. 3). For an overview see Figure 1.

Consultations Stage

The dispute settlement process starts when a complainant(s) notifies the WTO that they are requesting consultations regarding the defendant's trade measure which they believe is contrary to their obligations under the WTO (Busch & Reinhardt, 2006, p. 450) (Bütler & Hauser, 2000, pp. 506-509) (Horn et al., 1999, p. 3) (Latif, 2007, pp. 448-449). This leads to consultations between the complainants and defendants, at this stage third parties who have an interest in the dispute may be included if the defendant agrees (Bütler & Hauser, 2000, p. 508) (Horn et al., 1999, p. 3). If this fails to result in a mutual settlement or withdrawal of the dispute or if the defendant denies the request within 60 days then the complainant can formally request the formation of a panel to make a ruling on the issue (Busch & Reinhardt, 2006, p. 450) (Bütler & Hauser, 2000, pp. 506-509) (Horn et al., 1999, p. 3) (Latif, 2007, p. 449).

Panel and Appellate Stages

The panel is established by the DSB within 30 days, or 90 days of the request for consultations (Bütler & Hauser, 2000, pp. 506-509) (Latif, 2007, p. 449). During the next six months at most, the panel will review the facts of the disputes and gain insights from both complainants and defendants, as well as third parties (Bütler & Hauser, 2000, p. 508). This is generally in the form of written submissions and verbal hearings (Horn et al., 1999, p. 3). There are also opportunities for rebuttals (Horn et al., 1999, p. 3). Before the panel report is released, an interim report is issued to parties which gives an overview of the findings in a ‘final draft’ of the panel report (Bütler & Hauser, 2000, p. 508). This allows the parties to settle the dispute before the report is issued if desired (Bütler & Hauser, 2000, p. 508). If they cannot, the panel report is issued, usually within six months of the formation of the

panel (Bütler & Hauser, 2000, pp. 506-509). Crucially, the panel can give recommendations for the implementation of policies to bring any non-compliance back into compliance with obligations (Bütler & Hauser, 2000, p. 508) (Pauwelyn, 2000, p. 336). This panel report will be formally adopted by the DSB within sixty days unless one of the parties appeals the decision (Guzman & Simmons, 2005, p. 560) (Horn et al., 1999, p. 3) (Pauwelyn, 2000, p. 336). At this stage, if either party is unhappy with the ruling issued then they can file an appeal leading to an appellate review (Bütler & Hauser, 2000, pp. 506-509) (Busch & Reinhardt, 2006, p. 450) (Latif, 2007, p. 450). The Appellate Body (AB) is composed of independent legal experts who can review the legal case and ruling presented in the panel report (Bütler & Hauser, 2000, p. 508)

(Horn et al., 1999, pp. 3-4) (Latif, 2007, p. 450). They must issue their appellate report, usually within 60 days, to be adopted by the DSB within 30 days (Busch & Reinhardt, 2006, p. 450) (Horn et al., 1999, pp. 3-4) (Pauwelyn, 2000, p. 336). For the appellate report to be rejected there must be a consensus on its rejection from the DSB, which includes both the complainants and the defendant, regardless of whom the ruling is in favour of, making rejection uncommon (Horn et al., 1999, pp. 3-4) (Latif, 2007, p. 450).

It is also important to note that at any point throughout this process up until a ruling is issued, the complainant and defendant may come to a settlement and withdraw the dispute (Bütler & Hauser, 2000, p. 509). The only requirement is that the parties notify the WTO of a mutual agreement so that the DSB can ensure that any settlement complies with WTO obligations (Bütler & Hauser, 2000, p. 509) (Horn et al., 1999, p. 3).

Implementation Stage

If the Appellate Body's report rules in favour of the complainant at this stage there are two outcomes; either the defendant implements the suggested measure, or they do not do so within 15 months and the parties can begin negotiations for compensation of the complainant (Bütler & Hauser, 2000, pp. 506-509) (Latif, 2007, p. 450)

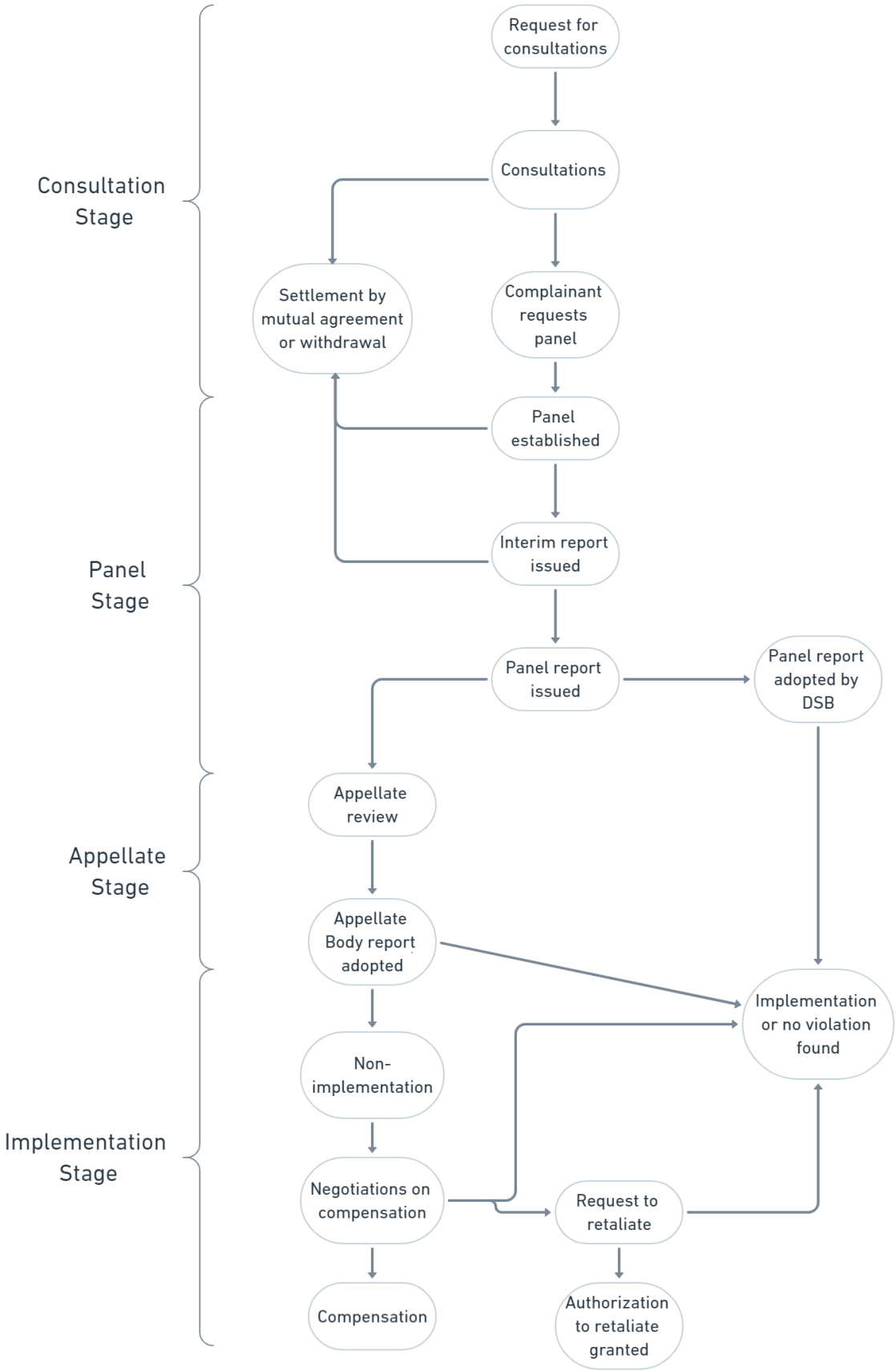

Figure 1 Overview of dispute settlement process. Sources: (Bütler & Hauser, 2000) (Guzman & Simmons, 2005) (Horn, Mavroidis, & Nordström, 1999) (Pauwelyn, 2000)

(Pauwelyn, 2000, pp. 336-337). At this stage, if compensation can be agreed upon, the dispute ends here and compensation is issued (Bütler & Hauser, 2000, pp. 506-509) (Pauwelyn, 2000, p. 337). This compensation generally must be directed at all WTO members, not just the complainant (Pauwelyn, 2000, p. 337). This is usually in the form of relaxing trade barriers such as reducing tariffs or inflating import quotas (Pauwelyn, 2000, p. 337). If they cannot agree within 20 days then the complainants can file a request with the WTO to retaliate, this is more common than compensation (Bütler & Hauser, 2000, pp. 506-509) (Horn et al., 1999, p. 4) (Pauwelyn, 2000, p. 337). This will be granted within ten days, allowing the complainant to take retaliatory action "equivalent to the level of nullification or impairment" (Bütler & Hauser, 2000, pp. 506-509) (DSU, 1994, Art. 22.4) (Horn et al., 1999, p. 4). That is to say, they are not to take any actions that will damage the trade of the defendant to an excess of the damage they have received as a result of the defendant's policy actions (Horn et al., 1999, p. 4). This is in the form of lifting concessions against the defendant by the complainant, third parties are not able to take part in this (Pauwelyn, 2000, p. 337). If a decision cannot be made on the level of the countermeasures, then an independent arbitrator will be called in to make a decision (Pauwelyn, 2000, p. 337). If, however, the defendant does implement some of the recommendations of the appellate report, or partially implement their recommendations, but the complainant is unhappy with these actions, they can note this, ideally within ninety days of this ruling, so that the original panel can decide if the implementation is acceptable (Horn et al., 1999, p. 4) (Pauwelyn, 2000, p. 337).

Third Parties

The inclusion of third parties is also important. Any party who does not want to, or cannot, get involved as a complainant can claim a ‘substantial interest’ in a dispute at any point before a panel has been established by notifying the DSB of its interest (DSU, 1994, Art. 10.2). This gives third parties a right to be heard by the panel in oral hearings or to make a written submission (Busch & Reinhardt, 2006, p. 450) (Tania, 2013, p. 388). Third parties also have the right to become a co-complainant if they feel that their rights have been ‘nullified or impaired’, which gives them the right to request the establishment of a panel for their own proceedings (DSU, 1994, Art. 10.4) (Tania, 2013, p. 388). Third parties do not

have the right to appeal a panel decision or make a claim before a panel (DSU, 1994, Art. 17.4). Though they can make submissions to the AB as well (Busch & Reinhardt, 2006, p. 450) (DSU, 1994, Art. 17.4) (Tania, 2013, pp. 388-389).

There are also what have been called 'informal third parties' who are not formal third parties who have these rights, but are members who are able to join consultations, often becoming formal third parties later in the proceedings (Busch & Reinhardt, 2006, p. 451). Members need only establish a 'substantial trade interest' to join consultations (DSU, 1994, Art. 4.11). These claims are rarely rejected (Busch & Reinhardt, 2006, p. 451). This is important to note particularly because of how many disputes are settled during consultations, these informal third parties may have a greater role than we might otherwise imagine (Busch & Reinhardt, 2006, p. 451).

Further, in some very select circumstances states can be granted 'enhanced third party rights' at the panel's discretion (Antoniadis, 2002, p. 302) (Tania, 2013, pp. 389-390). These are generally only granted by the panel when a state has an unusually large trade or systemic interest in the dispute (Pelc, 2017, pp. 7-8). Enhanced third party rights have only been granted in only nine cases to 2018 (Sekine, 2018). Generally, third parties seeking enhanced third party rights ask for one or more of the following rights; the ability to attend all meetings of the Panel along with main parties and to present oral and/or written statements at these meetings, to get copies of all submissions to the panel, and the ability to receive and remark on the interim Panel Report (Pelc, 2017, p. 7). For example, in EC Bananas III third parties in the case were given greater rights such as the ability to observe in the second substantive meeting of the panel as well as the first, and to make a statement (Antoniadis, 2002, p. 292). A further example is EC-Hormones (DS26 and DS48) where the United States and Canada were complainants in the disputes respectively, and also were granted enhanced third party rights in each other's dispute (Antoniadis, 2002, p. 293).

Changes from the GATT to the WTO

The dispute settlement process has undergone many changes over the years but most significant are the changes that happened as a result of the DSU and the establishment of the WTO. It is important to have an understating of these changes as much of the dispute

settlement literature focuses on cases from 1994 and earlier before the DSU came into effect. Firstly, the entire structure of the dispute settlement process changed under the WTO, as under the GATT there were eight different frameworks for dispute settlement each discussing a different area of disputes (Bütler & Hauser, 2000, p. 509) (Charnovitz, 2001, p. 803). Whereas, under the DSU there is a single framework for all areas (Bütler & Hauser, 2000, p. 509) (Charnovitz, 2001, p. 803) (Latif, 2007, pp. 450-451). Some argue that this has made it easier for smaller and developing states in bringing about disputes by simplifying the procedure, beginning to equalise the negative impact of smaller legal capacity (Busch & Reinhardt, 2002, p. 467) (Horn et al., 1999, p. 1) (Kuenzel, 2017, p. 174) (Tania, 2013, pp. 381-383).

One of the biggest victories in enforcement as a result of the DSU is the fact that the process is mandatory and must happen along a certain timeline (Guzman & Simmons, 2005, p. 560) (Latif, 2007, p. 451). This was not the case under the GATT system where long delays and blocking attempts from defendants were common (Bütler & Hauser, 2000, p. 509) (Guzman & Simmons, 2005, p. 560) (Latif, 2007, p. 448). Further, it gave states a right to utilise dispute settlement, particularly to have a panel formed, which was often blocked under the GATT (Bütler & Hauser, 2000, p. 509).

Further, under the GATT, consensus was required to move each step forward in the dispute settlement process, which of course is very difficult when that consensus includes the agreement of the state being filed against (Bütler & Hauser, 2000, p. 509) (Latif, 2007, p. 448) (Pauwelyn, 2000, p. 336). Under the DSU, this was flipped, where each step is followed by the next unless there is a consensus to stop the process (Pauwelyn, 2000, p. 336). This gave greater protections to smaller and weaker states who found it more difficult to bring about disputes under the GATT system (Pauwelyn, 2000, p. 336).

Further, under the GATT system panel rulings were not considered international law, nor did they hold much, if any authority, until they were ratified by the GATT membership (Bütler & Hauser, 2000, p. 509) (Charnovitz, 2001, p. 803) (Latif, 2007, p. 448) (Reinhardt, 2001, p. 176). This ratification required consensus rather than a majority and as such was almost impossible to gain without the defendant's support, making panel rulings practically useless for enforcement purposes before the DSU came into effect (Bütler & Hauser, 2000, p. 509) (Latif, 2007, p. 448) (Reinhardt, 2001, p. 176). The DSU also introduced the ability of both

the complainant and the defendant to appeal a panel ruling (Bütler & Hauser, 2000, p. 509) (Charnovitz, 2001, p. 803).

Potentially one of the most impactful changes under the DSU was the enforcement mechanism, which is the use of sanctioned retaliatory actions which was hugely strengthened as well as the introduction of the right to ask for compensation (Bütler & Hauser, 2000, p. 509) (Charnovitz, 2001, p. 803) (Reinhardt, 2001, p. 176) (Schwartz & Sykes, 2002, p. 193). One of the reasons to introduce retaliatory sanctions was to replace the use of unilateral sanctions (Charnovitz, 2001, p. 813) (Schwartz & Sykes, 2002, p. 203). These were common and allowed at any point in the process under the GATT, but considered illegal under the WTO (Reinhardt, 2001, p. 176).

Overall, the DSU provides a greater ability to initiate and follow through with disputes and allows for greater enforcement of panel and appellate rulings than was available under the GATT mechanism (Bütler & Hauser, 2000, p. 528) (Charnovitz, 2001, p. 803). All of these changes hugely improved small states' ability to utilise the DSM.

Chapter Three: Literature Review

Two primary literature niches are most relevant to and will inform, this research. Firstly, the literature surrounding WTO dispute settlement, followed by a more theoretical discussion on the small state literature.

Dispute Settlement Literature

The dispute settlement literature is large and varied and has generally put a large focus on dispute initiation, the functioning of the mechanism and the impacts on trade liberalisation. It generally has very little discussion around small states. Most relevant for this research is the literature around dispute initiation, the outcome of disputes, the effectiveness of sanctions, and the role of third parties in disputes. The discussion of these areas will be followed by the limitations of the literature on dispute settlement.

Dispute Initiation

Perhaps one of the most studied and potentially controversial areas of research around the WTO dispute settlement mechanism (DSM) is dispute initiation. That is what makes states more or less likely to initiate disputes and whether there is bias inherent in the process which can encourage or inhibit certain states in filing disputes. While this doesn't look specifically at the outcomes of dispute, it does give some ideas about barriers are faced by states in the DSM which gives insight into how states can more successfully navigate it.

According to the literature, there are three main reasons that states initiate disputes within the World Trade Organisation (WTO) framework. Firstly, the most common reason is for trade gains, both in terms of increased trade flows and increased monetary gain from those trade flows (Guzman & Simmons, 2005, p. 592). Secondly, to create a precedent in the WTO for future disputes (Guzman & Simmons, 2005, p. 592). Lastly, to help build, or rebuild, states' reputations (Guzman & Simmons, 2005, p. 592). Additionally, we see some trends occur where there is not much debate in the literature. Firstly, that disputes initiated have grown as membership of the General Agreement on Tariffs and Trade (GATT)/WTO has grown (Busch & Reinhardt, 2002, p. 464). Further, that those who are more active with the dispute settlement process tend to be more active in and reliant on trade (Busch & Reinhardt, 2002, p. 464) (Horn et al., 1999). Additionally, the more that a state has to lose

by the anti-free trade policies of its trade partners, particularly regarding market access, the more likely a state is to initiate a dispute (Bown, 2005, p. 291). Aside from these points, there is a huge amount of discussion and disagreement about what the primary factors in dispute initiation are. The most common arguments that will be discussed here are state size, the importance of capacity, the gravity argument, the level of development, and the influence of power.

State Size

There is very little literature that exclusively looks at state size and dispute initiation and those that do exist tend to use only rank measures, socially GDP and/or population, to define small statehood. Reinhardt argues that state size is not a major factor (Reinhardt, 2000, p. 20). Further, Horn et al. found that larger countries do not specifically focus on smaller countries in their filing of disputes (Horn et al., 1999, p. 19). Others have pointed out that, similar to the issues with developing countries, small states may have difficulty initiating disputes due to the lack of resources compared with larger states (Bown, 2005, p. 287). Some have argued that many of the same issues encountered by developing states in the dispute settlement mechanisms apply for small states, that is the lack of political and economic capital, and legal, economic, and retaliatory capacity (Bown, 2005, pp. 287-288) (Tania, 2013, pp. 381-384). These issues may make it difficult for small states to identify and fund disputes (Bown, 2005, p. 287). However, to date, there is little research that studies this in-depth, and particularly with a proper definition utilised for state size. Though, Bown did show that smaller economies tend to initiate fewer disputes than would otherwise be expected (2005, p. 291). However, this is based on GDP considerations and does not actually look at state size, as is typical of this literature (Bown, 2005, p. 305). This is one of the portions of the literature that could benefit most from a nuanced and thought-out definition of small statehood, rather than just identifying economic capacity as the only factor involved. This research intends to fill this gap by utilising such a definition.

Capacity

One of the most popular arguments for why some states file disputes in the WTO and others do not is the impact of capacity. The primary assumption for dispute initiation is that when

the potential benefits of initiating a dispute outweigh the costs, a state will initiate (Guzman & Simmons, 2005, p. 564). Guzman and Simmons argue that there are two primary costs to initiating a dispute, political and resource costs (2005, p. 564). As such, they argue that a state will only initiate a claim where the expected gains from filing at the WTO are greater than the political and resource costs of filing (Guzman & Simmons, 2005, p. 565). Most scholars agree with this analysis, the point where their argument becomes contentious is in their argument surrounding capacity. They argue that the capacity of the complainant might be important in whether or not they file, as the greater the capacity the more easily they can absorb these costs (Guzman & Simmons, 2005, pp. 564-565). They posit that states with a smaller capacity, which they define as the "institutional, financial, and human resources available to pursue a case" (Guzman & Simmons, 2005, p. 566), are more likely to initiate cases with large economies due to the higher potential benefit, which can outweigh the higher costs and less likely to initiate disputes with smaller economies with a lower potential benefit (Guzman & Simmons, 2005, p. 567). Further, they found that other factors relating to capacity, such as the number of WTO representatives, embassies, military expenditure, and government spending were all significant (Guzman & Simmons, 2005, pp. 583-587). Many other scholars have pointed to economic and legal capacity as significant factors for developing states and LDC's initiation of disputes (Busch, Reinhardt, & Shaffer, 2009, p. 572) (Busch & Reinhardt, 2002, p. 467) (Horn et al., 1999, p. 1) (Kuenzel, 2017, p. 174) (Tania, 2013, pp. 381-383). In terms of legal capacity, a lack of experience, expertise and specialisation is pointed to as particularly a problem for developing states and LDCS (Busch et al., 2009, pp. 572-574) (Tania, 2013, pp. 381-383). This area will be added to this research by the focus on small states, and particularly examining how small states' capacity constraints may impact their success in the DSM.

Gravity Argument

One important theory which claims to explain dispute initiation is the gravity argument espoused by notable authors such as Holmes et al., Horn Et al., and Sattler and Bernauer. This argues that larger economies will have greater participation in disputes, both in filing and having disputes filed against them than their trade volumes would otherwise suggest (Sattler & Bernauer, 2011, pp. 154-156). Several scholars have argued that the principal

determinant of whether a state is likely to file a dispute is the size and diversification of their exports, in that the larger and more diversified they are, the more likely they are to file disputes (Horn et al., 1999, p. 2) (Sattler & Bernauer, 2011, p. 156). Further, others have found that the principal variable in whether or not a state will be involved in a dispute, both as a complainant and a defendant is their share of world trade (Holmes et al., 2003, p. 13) (Sattler & Bernauer, 2011, pp. 154-156). Scholars who argue for the gravity argument tend to deemphasise the importance of capacity and other factors more relevant to small and developing states, rather saying that the discrepancy is explained by trade volumes instead (Holmes et al., 2003, p. 13). The main issue with this is that this literature tends to focus significantly on developing states and LDCs and ignore developed small states who also face constraints due to size, perhaps leading to conclusions that are not as generalisable as they could be, were a more useful and holistic definition of small states used in their empirical research.

Level of Development

There has also been a lot of debate in the literature around whether developing countries are discriminated against in the dispute settlement process. For example, Reinhardt showed that compared to the 1989 GATT reforms, less developed countries are almost five times more likely to have a dispute filed against them under the WTO (Reinhardt, 2000, p. 19). They are further up to a third less likely to initiate a dispute themselves (Reinhardt, 2000, p. 19). In contrast, Guzman and Simmons showed that poorer states do not seem to be disadvantaged in the WTO dispute settlement process with being defendant versus complainant in disputes, in fact, they show a higher share of involvement than their trade share would suggest (Guzman & Simmons, 2005, pp. 561-562). Though they do note that from 1995-2004 only one LDC used the dispute settlement mechanism and only once (Guzman & Simmons, 2005, p. 562) (Tania, 2013, p. 377). So that does suggest that very under-developed countries may be at a greater disadvantage. However, any research around the level of development does not have differentiation between small developing and middle and large developing states, meaning that any potentially compounded constraints faced by small developing states are not accounted for.

Power

Another major point of discussion in the research around dispute initiation is the role of power and power disparities between complainants and defendants. Sattler and Bernauer found that when there is a large power disparity between pairs of states they are less likely to participate in a dispute (2011, pp. 156-157). There are two possible explanations for this, that may both be true. Firstly, small states are avoiding using the WTO dispute settlement mechanism for fear of retaliation (Sattler & Bernauer, 2011, p. 144). Secondly, large states can gain concessions from small states outside of the WTO, and therefore prefer to do so (Sattler & Bernauer, 2011, p. 144). Though other research has found that even when there is a large power disparity between states, weaker states are not less likely to file disputes against more powerful states for fear of reprisal (Guzman & Simmons, 2005, pp. 570-571). The traditional wisdom seems to side with the former argument; however, the empirical evidence is mixed in the literature. This is an important area in the literature that needs more quantitative research to settle.

Outcome of Disputes

Another major source of debate is the literature surrounding the outcomes of disputes. Perhaps one of the least contested points in this area is that complainants are more likely to win disputes, though this is generally based on the ruling (Bütler & Hauser, 2000, p. 527) (Holmes et al., 2003, p. 21). For example, Holmes et al. found that complainants win disputes 88% of the time (2003, p. 21). While Reinhardt found that 63.6% of disputes between 1948 and 1994 supported the complainant 16.1% for the defendant (2001, p. 176). Almost everything else is up for debate. The main areas of this portion of the literature are the escalation of disputes and the research on liberation as an outcome in dispute settlement.

Escalation

An important point when discussing outcomes of dispute settlement is why some cases are settled at the consultations stage and why others escalate to the panel stage, and sometimes even further. It is important to note here that most cases do not go further than consultations (Busch & Reinhardt, 2002, p. 467). Of disputes between 1948 and 1994 41.9% were settled or withdrawn before the formation of a panel and 10.1% before the WTO delivered its ruling (Reinhardt, 2001, p. 176). Significantly, in 36.8% of disputes that were settled or withdrawn before a ruling, defendants gave full concessions and for those that were settled or withdrawn after a panel was formed but before a ruling was made, defendants fully conceded 63.3% of the time (Reinhardt, 2001, pp. 176-177).

One of the factors that makes concession most likely to occur is panel establishment, which increases the chance by around 27% (Reinhardt, 2001, p. 177). Further, factors that reduce the probability of full concessions by around 18% is a ruling in favour of the complainant and 55% for a ruling in favour of the defendant (Reinhardt, 2001, pp. 177-179). Additionally, concessions are much more likely before a ruling is issued (Busch & Reinhardt, 2002, p. 471). This shows that early settlement is favoured by the DSM despite the lack of effective methods of enforcement (Reinhardt, 2001, p. 178). Reinhardt argues that one of the reasons for this is that even a state who would not comply when the WTO ruled against them prefers to avoid retaliation, and thus settlement is more desirable (Reinhardt, 2001, p. 175). Reinhardt also finds that states are much less likely to settle once a ruling has been made (Busch & Reinhardt, 2002, p. 471) (Reinhardt, 2001, p. 175). This is due to the lack of knowledge of the ruling, which might make a defendant settle due to fear of retaliation if a ruling comes up against them, without this 'anticipatory effect' they are more likely to escalate a dispute (Reinhardt, 2001, p. 175). This fact is contrary to much of the existing literature in that it asserts that the anticipation of a ruling is more important in bringing about cooperative outcomes than the actual ruling itself (Reinhardt, 2001, pp. 175-176). As such, there is some dispute in the literature on the impact of rulings.

As such, while there is a lot of debate, and not much consensus, a few factors seem to be important. Firstly, when there is a ruling, in favour of the complainant or defendant, and/or a credible threat of retaliation, then a dispute is less likely to escalate (Bogdandy, 1992)

(Busch & Reinhardt, 2002) (Hudec, 1993). Further, concessions are more likely before a ruling (Reinhardt, 2001, p. 175). This is significant, particularly due to the low retaliatory capacity of small states leading to less credible threats of retaliation (See Retaliatory Capacity for further discussion). Certainly, the biggest issue with this portion of the literature is the time period in which it was produced, and more recent data is needed to corroborate these findings under the WTO. Further, there is little discussion about the expected increased cost of escalating disputes in the literature, which could impact findings, especially for small states with their low economic capacities.

Liberalisation

An important section of the literature that looks at the outcomes of disputes are those which discuss which factors result in successful disputes, though this section generally defines success as leading to trade liberation, rather than a state-centric definition of success (Bown, 2004b, p. 812). This research suggests that the threat of retaliation is a significant factor in the economic outcome of disputes (Bown, 2004b, pp. 812-813). Bown argues that the costs of failing to liberalise must be higher than the costs of liberalising for an offending state to "credibly commit to liberalisation" (2004b, p. 814). Further, when an impacted state is a large source of exports for an offending state they are more likely to liberalise (Bown, 2004b, p. 818). Additionally, the issue in the dispute seems to have an impact as to whether liberalisation is likely to be the result. For issues such as anti-dumping measures, countervailing duties, non-tariff barriers, safeguards and rules of origin, liberalisation is less likely to be the outcome than in less complex disputes such as those regarding tariffs (Bown, 2004b, p. 818 & 821). This is logical as the former measures are harder and more time-consuming to bring into compliance, and often require legislative input (Bown, 2004b, p. 821). Further, Horn et al. pose that disputes regarding industries such as clothing and agriculture may be more successful due to their greater lobbying power (Horn et al., 1999, p. 4).

There is evidence to suggest that outcomes are affected by state size. For example, Syropoulos' data suggests that the outcome of tariff wars are closely related to the size of a state, in that the bigger the state the greater the likelihood of liberalisation (Syropoulos,

2002, p. 721). This is likely due to lower retaliatory capacity for small states. Though it should be noted that the measures used to illustrate country size are objective economic factors such as GDP per capita (Syropoulos, 2002, p. 710). As such, how this translates to success for small states is unclear.

Effectiveness of Sanctions

Another very important and contentious area of debate in the literature is around sanctions or retaliation, especially as to whether they are an effective tool for enforcing WTO obligations. It is significant to point out that the WTO doesn't technically have sanctions, at least according to the wording used in WTO documents, rather a suspension of concessions (Charnovitz, 2001, pp. 792-793). However, this effectively creates a sanction (Charnovitz, 2001, p. 793). There are two primary camps regarding sanctions, those who have argued that retaliatory sanctions are effective in inducing compliance and those who argue against them in favour of alternatives.

One of the main arguments in favour of sanctions is scholars who see the value in removing unilateral sanctions in favour of sanctioned retaliatory actions (Charnovitz, 2001, p. 813) (Schwartz & Sykes, 2002, p. 203). This is as these sanctions have much greater oversight and transparency through the WTO, which reduces the possibility of excessive sanctions as was common with unilateral sanctions (Charnovitz, 2001, p. 813) (Schwartz & Sykes, 2002, p. 203). Which of course is going to have greater benefit for small states due to their lower levels of power and leverage. Some argue that the sanctions are especially effective for deterrence rather than for enforcement (Schwartz & Sykes, 2002, p. 181). Others contend that this is a pointless argument because the WTO lacks any sort of overarching authority that can compel sovereign states to comply with their regulations as law (Nzelibe, 2005, p. 222). Additionally, sanctions can be a more efficient option compared to alternatives as it is easier to implement once granted, requiring only the agreement and action of the impacted state (Charnovitz, 2001, p. 813). Further, many have said that it is not in the outcomes of sanctions that we see their real value, but in the perception, it has given the WTO as more

powerful and having ‘teeth’ in a way that it was not seen previously (Charnovitz, 2001, p. 809).

In contrast, many scholars argue that sanctions should not be utilised by the WTO and that they are not effective in enforcing rulings. One of the more popular arguments against retaliatory sanctions is that they are anti-free trade, and should therefore be replaced with something that has greater support for free trade such as collective sanctions or compulsory monetary compensation (Nzelibe, 2005, p. 215) (Pauwelyn, 2000, pp. 342-345). Another significant issue with sanctions is that they don't just impact the offending states, but also the imposing state (Charnovitz, 2001, pp. 814-815). As such when used purely for retaliation it is not useful, rather only when there is hope for bringing the offending state back into compliance, can sanctions be used as an effective tool (Charnovitz, 2001, p. 815). Additionally, there are certain attributes in the economy of states that are factors in whether sanctions are more likely to succeed or fail, and as such, they are even more discriminatory than they otherwise would be (Charnovitz, 2001, pp. 816-817). Firstly, the size of an economy is significant, as larger economies are better able to weather the negative impacts of sanctions, both for those imposing and those receiving sanctions (Charnovitz, 2001, p. 816). Because of this, some scholars have also argued that retaliation may not be an effective tool for developing states, particularly for LDCs (Tania, 2013, p. 385) This is as their market share and economic footprint are so small in comparison to most other states that any retaliation would be meaningless against the offending state's economy (Tania, 2013, p. 385). Secondly, how dependent an economy is on imports and exports is also significant (Charnovitz, 2001, p. 816). When a state has a high dependency on imports it makes utilising sanctions more difficult, whereas a highly export-dependent economy will be more likely to have large negative impacts as a result of sanctions, (Bailes & Thorhallsson, 2017, p. 53) (Charnovitz, 2001, pp. 816-817). These constraints could also apply to small states, but the literature has largely excluded them from this analysis thus far. As such, this research attempts to help fill this gap by discussing the impacts of low retaliatory capacity for small states.

Third Parties

It is also important to discuss the literature surrounding the involvement of third parties in disputes. This is significant as around three-fifths of disputes have third parties involved, and there tends to be a larger number of third parties than complainants or defendants (Busch & Reinhardt, 2006, p. 446). The purpose of third party involvement in disputes is to prevent complainants and defendants from coming to bi- or tri-lateral agreements that benefit only them and even discriminate against others who may have a stake in the dispute (Bagwell & Staiger, 2002) (Busch & Reinhardt, 2006, pp. 446-447).

An important but contested point is around the impact of third parties on outcomes in the WTO. There seems to be evidence that third parties influence rulings in other contexts, such as domestic court systems and even some international contexts such as the European Court of Justice (Busch & Reinhardt, 2006, p. 447). Busch and Reinhardt go even further, (2006, p. 448)showing that the impact of third parties is greatest during the consultations stage of the process (Busch & Reinhardt, 2006, p. 449). This is as, third parties provide an audience to the negotiations, which increases the audience costs and locks defendants and complainants into previously expressed stances more securely than they otherwise would be (Busch & Reinhardt, 2006, p. 448) (Fearon, 1997, pp. 69-70) (Stasavage, 2004, pp. 682-683). As such, scholars have argued that the participation of third parties in disputes makes early settlement less likely (Busch & Reinhardt, 2006, p. 448). This is also because the higher the number of parties to a dispute, the greater the complexity, which leads to increased costs and time required (Busch & Reinhardt, 2006, p. 448). They do this in several ways. Firstly, by increasing the audience, as stated, and thus increases the transparency of the process (Busch & Reinhardt, 2006, pp. 455-456). While generally in the WTO transparency is seen as positive, increased transparency does involve costs and increased complexity (Busch & Reinhardt, 2006, pp. 455-456) (Stasavage, 2004, p. 668). Further, bargaining costs will increase with the introduction of third parties, as they are a “participatory audience” (Busch & Reinhardt, 2006, p. 456). As a result of this, third parties can also influence the subject of the discussion by adding an alternative perspective into negotiations (Busch & Reinhardt, 2006, pp. 456-457). As a consequence of this reduction in the likelihood of early settlement, the participation of third parties increases the likelihood of a ruling being issued (Busch &

Reinhardt, 2006, p. 448). They also find that if there if the participation of third parties results in an escalation to a panel, they are likely to influence the ruling in favour of their loyalties (Busch & Reinhardt, 2006, p. 475).

One of the only points about small states in the literature around third parties is that the primary form of participation for small states in the WTO dispute settlement mechanism has been as a third party (Tania, 2013, p. 386). There has been little if any, analyses examining substantive questions of small states as a third party. As such, the literature around third parties is both lacking any small state analysis and also has failed to conclude whether the benefits of third parties preventing discriminatory settlements outweighs these disadvantages (Busch & Reinhardt, 2006, p. 450).

Limitations of the Dispute Settlement Literature

The most important limitation of this literature in regards to this research is that even when state size is taken into account, which is not often, very few of these scholars have any real discussion of criteria for small or large, and no distinction for middle powers (Holmes et al., 2003) (Horn et al., 1999) (Sattler & Bernauer, 2011). Further, when small states are examined it is often in the context of small developing and/or poor states versus large industrialised wealthy states (Horn et al., 1999). This does not give the full picture of small states, as there are many small industrialised wealthy states just as there are large developing poor states. As such, while it may contribute to the discussion it still does not give much insight into the differences between small, medium, and large powers in the WTO dispute settlement process. Further, for many of these scholars that do look at state size, their work doesn't show the nuances of small state versus large state action in the WTO because they are using proxies such as political power or economic strength which of course, is not a sufficient measure of small versus medium versus large statehood (Guzman & Simmons, 2005, p. 569) (Sattler & Bernauer, 2011, pp. 151-152). This is one of the areas that this research intends to improve on and add to. Further, much of the research that

looks into constraints faced by states when engaging in the DSM focus on developing states, which while there is a lot of overlap in this, the two are not mutually exclusive.[3]

Furthermore, much of the literature is generally focussed on the success of disputes defined as leading to liberalisation, or for the dispute process to go smoothly, or for states to meet their WTO obligations. While these are important areas of study, it excludes research into how states use dispute settlement for their own means using a state-centric definition of success. Particularly to give better insight into how states can and should navigate this system. Without this understanding, states do not have a clear path of when and how to undertake disputes to benefit their own trading situation. As such, this research intends to start to fill this gap, in looking at this question regarding small states. More research should be undertaken in this area for other states as well, such as developing states and LDCS or large and middle states. We can also argue that almost every element of WTO dispute settlement literature would benefit from more focus on developing states and especially LDCs, as this topic is limited in the literature.

Another major limitation in the literature is that much of the literature is 15-20 years+ old. This is significant due to the discussed differences between the GATT and WTO dispute settlement processes, as this could potentially make the results of the literature less accurate than research that is primarily or wholly under the WTO. This is particularly true for research with cases from before 1994. Further, this also means there is a lacking of research in the last 25 years of WTO dispute settlement in the literature, which is especially important due to the reduction in disputes since the 2000s (Kuenzel, 2017, p. 158). As such a lot of the research needs to be re-examined to see how and if these conclusions have changed, particularly under the WTO, to see if there are new trends and if they need to be adjusted accordingly.

[3] For example see Abbott, R. (2007). Are Developing Countries Deterred from Using the WTO Dispute Settlement System?: Participation of Developing Countries in the DSM in the years 1995-2005. *ECIPE Working Paper, No. 01/2007*, Bown, C. P., & Hoekman, B. M. (2005). WTO Dispute Settlement and the Missing Developing Country Cases: Engaging the Private Sector. *Journal of International Economic Law, 8*(4), 861-890. doi:10.1093/jiel/jgi049 and Nottage, H. (2009). Developing countries in the WTO Dispute Settlement System. *Global Economic Governance Programme*.

As such, this research intends to address these three major gaps in the literature by examining how small states have navigated the WTO's dispute settlement mechanism, with a focus on how they can do so to more have more successful results in their disputes centring on disputes under the WTO.

Small State Literature

The relevant small state literature looks at the discussion around small states and trade, defining and describing small states, and small state security and behaviour, particularly Alliance Theory and Shelter Theory. The limitations of the small state literature as a whole will also be discussed. The study of small states had a very slow start, mainly due to the perception for a long time that a small state is simply a smaller state, and that their motivations, behaviours, weaknesses, and strengths were not inherently different to that of large and medium-sized states. It was with the acknowledgement of the inherent differences that the scholarship really began.

There are two major time periods in which a lot of emphasis was put on small states. This first started in the 1960s-1980s, with traditional small state scholars who primarily discussed defining small states. Those that did discuss small state security primarily focused on traditional realist theories of Alliance. The work of these scholars tends to be viewed as key founding literature in small state scholarship, these include Fox, Katzenstein, Keohane, Liska, Osgood, Rothstein, Vital, and their contemporaries. Secondly, there has been a resurgence of this scholarship in the last few decades with contemporary small state scholars such as Bailes, Pederson, Thayer, and Thorhallsson bringing out ideas of Shelter Theory and more focus on the strength of small states, the gains, and losses of engaging with larger states and coalitions, and soft-power and security for small states. These periods are where we see the bulk of the significant literature. Perhaps this is as, after the second world war and decolonisation we saw the establishment of many more small states than the world had ever seen before, making their study suddenly more important. Further, today there is an increasing prevalence of international organisations and globalisation as well as trade agreements that span over into non-economic areas as well. All of which have massive

implications for small states, and also in many ways allow small states to have a greater impact on the international system making the study of small states more relevant again.

Small States and Trade

There is a distinct lack of literature that specifically looks at small states and trade. Of the literature that does exist one of the only conclusions that scholars have been able to agree on is that large states benefit more from bilateral versus tri- or multilateral trade agreements with small states than small states do from such agreements (Anderson & Wincoop, 2003, p. 183) (McCallum, 1995). This is due to the large power disparities often present, which leads smaller states to have greater leverage when negotiating in groups compared to acting alone (Anderson & Wincoop, 2003, p. 183) (McCallum, 1995).

According to some scholars, there are four primary difficulties that small states face in terms of international trade (Handel, 2006, p. 165). Firstly, they depend more on trade than larger states as their capacity to produce a wide variety of goods is reduced making self-sufficiency more difficult, especially for LDCs (Bailes & Thorhallsson, 2017, p. 53) (Handel, 2006, p. 166). Secondly, their ratio of exports to GNP is much higher than 'economically strong states' leaving them more vulnerable to fluctuations in the market (Bailes et al., 2016, p. 14) (Bailes & Thorhallsson, 2017, p. 53) (Handel, 2006, p. 165). Thirdly, small states generally have fewer trade partners than large states, this makes them more vulnerable to becoming dependant on just a few trading partners for vital goods or exports (Handel, 2006, p. 165). Lastly, small states tend to have difficulty in developing large scale industry due to their reduced capacities, and smaller capital resources to finance research and development (Bailes et al., 2016, pp. 13-14) (Handel, 2006, p. 165). Small states can usually make up for their small domestic audiences by exporting to larger economies which also increases the dependence on exports (Handel, 2006, p. 168). Additionally, smaller states tend to obtain much higher levels of per capita aid money (Handel, 2006, p. 169).

Despite such importance shown by some scholars for trade and economic security in small states, there is little more research into the subject. Rather, the small state literature has focused on definition and small state security.

Defining and Describing Small States

Much of the small state literature has focused on defining small states, rather than on how and why they act the way they do in the international system. While this was certainly the first step in small state literature, it is an important one, as, before this, small states were rarely, if at all, differentiated from medium and large states in the international system. As such, this step allowed for future analysis of how small states act in the system.

One of the earlier scholars to separate small states from large and medium powers was Fox, who argued that the best way of defining small states is by looking at how able they are and have been in "securing its own demands or in resisting the demands of other states" (Fox, 2006, p. 40). While Vital divided states into categories of small, middle, and greater states based on population size (Vital, 2006, p. 7 & 81). These scholars have a significant focus on tools of hard power and dismissed the importance of the tools of soft power such as international law, autonomy, and reputation (Keohane, 2006, p. 63).

In contrast, Rothstein argued that small states are those who know that they require the aid of larger states and institutions to secure their political, economic, and physical survival (Rothstein, 1968, p. 29). Rothstein emphasized the importance of the states' perception of themselves and their weaknesses as fixed (Rothstein, 1968, p. 29). He also argued against definitions of small statehood as defined by objective rank measures (Rothstein, 1968, p. 23). The strengths of Rothstein's definition are in his recognition of soft power for small states in factors such as international law, autonomy, and reputation (Rothstein, 1968, p. 33).

Keohane argued that small states are those who don't have any substantial influence on the international system (Keohane, 2006, p. 60). As such, small states are likely to utilise and encourage international organisations, even if they don't trust that they will be useful in limiting great powers or in securing their protection (Keohane, 2006, p. 60). They recognise that what power they do have is best utilised in groups and that as such, international organisations can be used to develop beneficial norms and attitudes for the small states (Keohane, 2006, p. 60).

Handel views small states as 'weak states' and uses the term interchangeably with small states (Handel, 2006). He argued that small states have a decreased importance for

domestic factors impacting foreign policy (Handel, 2006, p. 149). Further, that they are more concerned with their own survival than other states, making the interests of weak states more explicit (Handel, 2006, pp. 149-150). Handel further argues that the small states tend to have more straightforward bureaucracies which naturally would make the influence of that bureaucracy in foreign policy-making smaller. However, this is contentious, as small states do not necessarily have less complex bureaucracies even if they are much smaller. Despite this critique, Handel argues from these observations that small states tend to have less autonomy over their foreign policy-making power as it is more externally determined (Handel, 2006, pp. 149-150). Of course, the biggest issue with Handel's analysis of the small state is his conflating small with weak, this is not necessarily the case and small states while generally having a smaller military and economic capacity can be powerhouses in certain areas.

Given these competing definitions within the literature, there are a variety of recurring approaches that we can see used. Firstly, and most popular with the more traditional realist literature, is placing somewhat arbitrary limits on objective rank measures such as population or GDP (Barston, 1973, p. 15). For example, Vital (2006). Second, is by looking at their influence in relations to other states, both internationally and regionally (Barston, 1973, p. 15). For example Keohane (2006) and Fox (2006). Lastly, is by looking at specific qualities that small states tend to have and creating a hypothesis based on this to differentiate small states (Barston, 1973, p. 15). For example, Bailes et al. (2016), Handel (2006) and Rothstein (1968). This last point tends to be more of a holistic approach. None of these approaches are perfect, though more modern analyses tend to favour the latter approach over the former approaches. This research leans most heavily on the latter approach, though also recognises the usefulness of the former two, as such utilises a mixed method of defining small states.

Alliance Theory

Alliance Theory is one of the predominant theories of security for states in the international system and is heavily based on realist literature (Reiter, 2006, p. 231). As much of the literature was, Alliance Theory originally was simply a way to understand how states secure

their own survival by utilising alliances in the international system[4]. Alliances can include more formal agreements between states for security, while others argue that there can be more informal forms of alliances that go further than simply military support (Liska, 1968, p. 3) (Osgood, 1968, p. 17) (Reiter, 2006, p. 235). (Rothstein, 1968, p. 49) (Walt, 1987, p. 12). The older literature often does not differentiate between state size any more than to say great powers and other states. It is also important to note that often in the earlier literature, while there may be some differentiation between 'weak' states and 'great powers', this is often the only distinction, in that every state that is not a great power is seen as weak, and often there is no definition of weak or of great.

Most realist scholars argue states will usually choose an allying strategy of either balancing against, or bandwagoning with a great power as their tools in ensuring survival in the international system (Walt, 1987). Generally, when a small state chooses one of these strategies, they are trying to create a more favourable 'balance of power' or 'balance of threat' in the international system (Morgenthau, 1967, p. 176) (Walt, 1987). Balancing is the idea that 'weak' states will join alliances with other states against the larger states to give them greater power and leverage than they would otherwise have (Walt, 1987, p. 17). In contrast, bandwagoning, joining an alliance with the great power, exemplifies the concept of success breeding success in that weaker states want to join strong ones (Walt, 1987, p. 19). Walt argues that states will choose to bandwagon if they see the state as a threat or if, during a conflict, they may feel that the seemingly stronger side is likely to win and wish to gain from their victory (Schweller, 1994, pp. 93-95) (Walt, 1987, p. 21). He argues that

[4] In addition to the works cited in this literature review see the following for more details on traditional Alliance Theory; Robert Rood and Patrick McGowan, "Alliance Behavior in Balance of Power Systems," American Political Science Review, 79, no. 3 (1976); Brian L. Job, "Membership in Inter-nation Alliances: 1815-1865,'' and Randolph Siverson and George T. Duncan, "Stochastic Models of International Alliance Initiation: 18851965,'' in Mathematical Models in International Relations, ed. Dina Zinnes and William Gillespie (New York, 1976), pp. 74-109; George T. Duncan and Randolph Siverson, "Flexibility of Alliance Partner Choice in Multipolar Systems: Models and Tests," International Studies Quarterly, 26, no. 4 (1982); R. P. Y. Li and W. R. Thompson, "The Stochastic Process of Alliance Formation Behavior," American Political Science Review, 72, no. 4 (1978); W. J. Horvath and G. C. Foster, "Stochastic Models of War Alliances," Journal of Conflict Resolution, 7, no. 2 (1963); Jack S. Levy, "Alliance Formation and War Behavior: An Analy sis of the Great Powers, 1495-1975,'' Journal of Conflict Resolution, 25, no. 4 (1981); J. David Singer and Melvin Small, "Alliance Aggregation and the Onset of War," in Alliances: latent War Communities in the Contemporary World, ed. Francis A. Beer (New York, 1970); and Charles W. Kegley and Gregory A. Raymond, "Alliance Norms and War: A New Piece in an Old Puzzle," International Studies Quarterly, 26, no. 4 (1982).

'weaker' states are more likely to bandwagon rather than balance (Walt, 1987, p. 29). As such, balancing and bandwagoning are seen as very important alliance behaviours by almost all realist theorists, but the importance and use of each, as well as the implications for this, are hotly debated.

Many scholars have argued that in order to be militarily, economically and politically secure, small states must join an alliance of small and/or medium powers or become affiliated with a larger power (Handel, 2006, p. 176) (Rothstein, 1968, p. 34) (Vital, 2006, p. 79). This is as a result of the structural weaknesses of small states, particularly their typically small population, domestic market, GDP, territory, and military capacity (Katzenstein, 2006, p. 195) (Thorhallsson, 2019, p. 384) (Vital, 2006, pp. 77-79). This view typically focuses on small states' 'hard' security (Bailes et al., 2016, p. 12). Many argue that a small state will not survive without bandwagoning or balancing (Bailes & Thorhallsson, 2017, p. 51) (Rothstein, 1968, p. 34). Liska notes that for small states in particular alliances have three main functions, security, stability and status (Liska, 1968, pp. 27-29).

Despite the application of Alliance Theory to small state security and issues, it was not created specifically regarding small states, and as a result reflects the motivations and behaviour of large and medium states as well, making it a less relevant theory when looking exclusively at small states (Bailes et al., 2016, p. 10).

Shelter Theory

As a result of these issues with the small state security literature, Shelter Theory was proposed to build a more accurate model of the unique challenges that face small states, both external issues and internal flaws (Thorhallsson, 2019, p. 385). According to Shelter Theory, in order to protect against these challenges small states are likely to seek political, economic, and societal shelter (see Table 1) (Bailes & Thorhallsson, 2017, p. 52). This is what links the small state security literature to the involvement of small states in the World Trade Organisation because it recognises the importance of other forms of security for small states and not just physical security which was almost entirely the focus in Alliance Theory.

The different forms of shelter protect against the different challenges and weaknesses of small states. To protect against the lack of military and diplomatic resources small states will

seek political shelter (Bailes & Thorhallsson, 2017, pp. 52-53). To protect against the greater reliance on the international market, which makes them more vulnerable to its fluctuations, small states will seek economic shelter (Bailes & Thorhallsson, 2017, p. 53). Small states will seek societal shelter to protect against stagnancy in areas of innovation and technology (Bailes & Thorhallsson, 2017, p. 54) (Thorhallsson, 2019, p. 386). This is due to having a smaller population size and the corresponding lack of expertise and leads to a greater reliance on the free movement of people, goods and ideas (Bailes & Thorhallsson, 2017, p. 54) (Thorhallsson, 2019, p. 386). One of the areas that Shelter Theory adds that is lacking in alliance theory is the discussion around the societal weakness of small states and how these can be mitigated against using shelter (Bailes & Thorhallsson, 2017). Most relevant to this research is primarily the economic shelter that the WTO bring, though one could also argue that the use of disputes to build reputation and other aspects could also lend WTO participation to political shelter as well as societal shelter due to the legal expertise that can be accessed through the WTO, particularly for developing countries (Guzman & Simmons, 2005, p. 592).

The importance of seeking any form of shelter is that it can help to lessen uncertainty and allow small states to better handle volatility, as such the more comprehensive the shelter the better small states can do so (Thorhallsson, 2019, p. 385). Shelter Theory is also particularly relevant to today's international system, as, post-World War II, multilateral and international institutions have become the preferred form of shelter for many small states, rather than single superpowers as was previously favoured (Thorhallsson, 2019, pp. 381-382).

Further, different forms of shelter are closely linked, with some institutions or states being able to provide more than one form of shelter. For example, the European Union and the World Trade Organisation can provide all three forms, see Table 1.

Political Shelter	Economic Shelter	Societal Shelter
'Direct and visible' support in military and diplomatic matters	Direct economic aid and investment, favourable loans and market access,	Transfers of culture, norms education, and technology and innovation

	currency unions, and common markets.	
• ANZUS • European Union • Five Eyes • Large states e.g., China and United States • NATO • United Nations • World Trade Organisation	• European Union • Free trade agreements • International Monetary Fund • Large states e.g., China and United States • World Bank • World Trade Organisation	• European Union • Free trade agreements that allow for freer movement of people and ideas • International organisations • World Trade Organisation

Table 1 Forms of Shelter (Bailes & Thorhallsson, 2013, p. 100; 2017, pp. 52-54; Thorhallsson, 2019, p. 385)

Though the former provides more political and societal shelter than economic, compared to more economic shelter than political or economic for the latter. This shows that there is not always a clear delineation between the different forms of shelter and that involvement in different aspects of the international system might provide one, two or all three forms of shelter depending on the type of involvement and the context.

Limitations of the Small State Literature

Overall, the small state literature leaves much to be desired. Firstly, there is a lack of research on small states and trade, in almost every aspect. Further, there has historically been too much focus on defining states and too little on implications of those strengths and weaknesses. The literature also focuses on the weaknesses of small states, which of course is very important, but is lacking a lot of the discussion around the strengths of small states (Thorhallsson, 2006). Another area that is lacking is large-N scale research around small states security. This is especially the case for Shelter Theory, which tends to rely heavily on case and small-N comparative studies, though is also an issue throughout the literature.

There is also a general lack of quantitative research in this area, it focuses heavily on qualitative studies, which while very useful and necessary, are less credible when not corroborated by quantitative studies.

Further, the majority of small state literature focuses heavily on the economic and physical security implications of small statehood and neglects the political and societal security implications. While Shelter Theory has begun to fill this gap, more research is required to make up for the decades of neglect in this area. An additional issue with the literature is that it has often focused either on European or on developing small states which means that the conclusions are not very generalisable across small states. Further, at the time of writing this thesis, no literature goes into depth on the topic of how trade or the use of dispute settlement in trade conflicts impacts the security of small states. As such, this research intends to begin to fill some of these gaps, particularly regarding how small states use trade forums such as the WTO's dispute settlement mechanism and how they can do so more successful and the use of the WTO as a form of economic shelter for small states.

Summary

In summary, the relevant literature emphasises the importance of capacity for states taking part in the DSM, particularly legal and economic capacity, which is most relevant for developing states and LDCs, with some of the literature suggesting small states as well. Other factors such a trade flow, level of development, and power have all also been suggested as factors in dispute initiation with varying levels of acceptance in the literature.

The discussion of outcomes in the literature comes to few conclusions. With arguments for a ruling being important in preventing the escalation of disputes along with a credible threat of retaliation and concessions are more likely before a ruling. In addition, the literature concludes that liberalisation is more likely to be a result in less complex disputes and that the smaller the state, in terms of GDP, the less likely liberalisation is to be the result in tariff wars.

Though there is little consensus on the effectiveness of sanctions in enforcing WTO rulings several conclusions seem likely. Retaliatory sanctions are more useful as deterrence, larger economies are better able to bear the impacts of sanctions, most developing states are unable to successfully use sanctions as an effective tool for compliance, and that export-

dependent economies are more likely to be damaged when imposing sanctions. Additionally, it seems that third parties are more likely to increase the chance of escalation in disputes and the chance of a ruling being issued, as well as influencing the rulings in favour of their loyalties.

The small state literature has increasingly moved towards more involved and holistic definitions and has moved from Alliance based theories of small state security, towards more encompassing Shelter based theories which also look at the implications of economic, political and societal shelter, as well as the traditional physical shelter.

Chapter Four: Factors in Success: Legal Capacity

Possibly the single most significant factor in the success of small states in their disputes against larger states is legal capacity (Hsieh, 2010, p. 1016) (Martin, 2021, 21 September)[5] (Nottage, 2009) (Rodríguez, 2021, 31 August)[6]. The most important aspects of legal capacity are that small states are constrained by are the small size of their in-house legal teams, lack of specialisation, lack of expertise and depth of knowledge, lack of experience, and high costs of developing greater capacity.

One of the most significant factors in why small states struggle with lower legal capacity is their lack of human capital. We can see this limitation when looking at the impact of human capital capacity on the outcome of disputes. When looking at the Human Capital Index (HCI) score of complainants', disputes with successful outcomes have complainants with a higher HCI score on average, compared with both partially at 12.3% higher and unsuccessful at 11.8% higher (see Figure 2). With, partially successful disputes having, on average, complainants with a slightly lower score than unsuccessful disputes at 0.5% lower (see Figure 2). Though due to the small sample size, the results for unsuccessful disputes should be taken with a grain of salt.

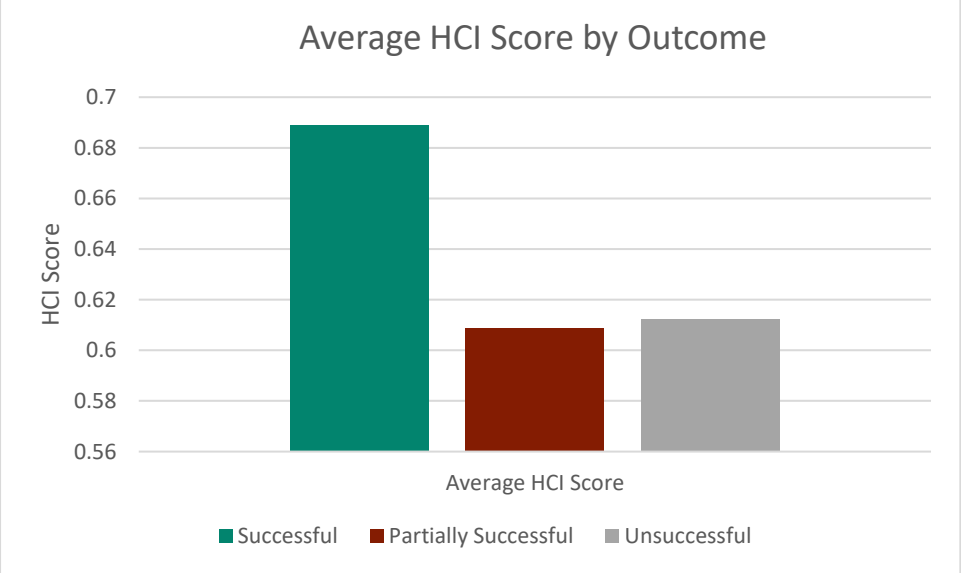

Figure 2 Average HCI Score by Outcome. Source: WTO dispute data and World Bank Data

[5] Emily Martin (false name) is an ACWL official who granted a personal interview.
[6] Luis Rodríguez (false name) is a trade official from a small South American state who granted a personal interview.

The main reasons that small states are more likely to have low legal capacity are their human capital and economic capacity constraints. This is as small states tend to have low human capital capacity due to smaller populations leading to a lack of expertise in the population (Bailes & Thorhallsson, 2017, p. 54) (Simon, 2021, 17 September) (Vital, 2006, p. 81). Though for small developing states it may be compounded, even middle or large developing states have larger populations to draw from (Simon, 2021, 17 September). As such the human resource complaint faced by Lichtenstein will be greater than that faced by Brazil, despite its greater level of development (Nottage, 2009) (Simon, 2021, 17 September). Human capacity constraints are compound for small developed States and LDCS as developing states tend to have a less-educated populace leading to difficulties finding highly educated specialised World Trade Organisation (WTO) trade lawyers (Fasih, 2008) (Muller, 2021, 25 August). Further, small states tend to have lower economic capacities than middle and large states, see Economic Capacity for further discussion (Bailes & Thorhallsson, 2017, p. 54) (Hsieh, 2010, p. 597) (Vital, 2006, p. 81). As such, developing and maintaining the necessary number of lawyers and trade experts, specialisation, experience, and depth of knowledge in-house is usually prohibitively expensive for small states, who are then forced to turn to external counsel (Aziz, 2021, 1 September) (Muller, 2021, 25 August).

One of the biggest impacts of low human capital and economic capacity is the size of in-house legal teams. Many small states have tiny departments, for example, Guatemala and Austria both have only one person in the department, as do many Pacific states (Rodríguez, 2021, 31 August) (Simon, 2021, 17 September)[7] (Weber, 2021, 30 August). Typically what this looks like is a team of 1-4 people in Geneva, for those states with permanent representation in Geneva, and a department in the state capital, but for many small states, particularly small developing stares, these provide little to no practical support (Aziz, 2021, 1 September)[8] (López, 2021, 26 July)[9] (Muller, 2021, 25 August)[10] (Rodríguez, 2021, 31 August) (Weber, 2021, 30 August). Often these officials are trade and/or foreign affairs experts and sometimes lawyers or those with a law background are included in the team (Muller, 2021,

[7] Lukas Simon (false name) is an international trade lawyer from a large law firm who granted a personal interview.
[8] Amir Aziz (false name) is a trade official from a small Middle Eastern state who granted a personal interview.
[9] Mateo López (false name) is a trade official from a small South American state granted a personal interview.
[10] Sofia Muller (false name) is a trade official from a small European state who granted a personal interview.

25 August). Larger and richer states tend to have bigger in-house capacity both because they tend to be bigger economies and therefore involved in more disputes allowing officials greater experience in the system and because they have greater economic capacity to build and maintain such large teams (Keoni, 2021, 31 August)[11] (Martin, 2021, 21 September). Large states, particularly the United States and the EU, as well as some middle states, such as Canada, have large in-house capacities some with hundreds of specialised and experienced lawyers (Keoni, 2021, 31 August) (Martin, 2021, 21 September).

Many factors go into why restricted human capital and economic capacity and therefore smaller teams impact small states' ability to succeed in disputes. Firstly, is the most obvious, when you have only a small amount of people handling disputes, they don't have the time to independently litigate a case (López, 2021, 26 July). When there is only a handful of people in the department, no one has time to read a 600-page panel report, to research and write written submissions and present at oral hearings, while also still being expected to identify other problem measures, and often to handle other areas of the WTO such as negotiation (López, 2021, 26 July). This just isn't feasible for most small states and is compounded for states who have language barriers and lack the capacity to translate large documents on time, this is especially an issue for small developing states and LDCS (Tania, 2013, p. 382). Further, there are many very important deadlines in WTO proceedings that tend to be quite short so when the teams dealing with disputes are small it can make it much harder to handle (Muller, 2021, 25 August). Further, when departments are small there is not enough time for members of a team to specialise in dispute settlement, they often have very large portfolios, and as such their time is split between different areas (López, 2021, 26 July) (Martin, 2021, 21 September) (Muller, 2021, 25 August). This makes it difficult for them to gain the depth of knowledge that is so important in dispute litigation (Martin, 2021, 21 September). In comparison, larger states, especially the United States and the EU, that have large in-house teams and many lawyers who specialise in WTO dispute settlement, even middle states such as Canada and Colombia, tend to have greater specialisation (Martin, 2021, 21 September) (López, 2021, 26 July) (Muller, 2021, 25 August).

[11] Kauri Keoni (false name) is a trade official from a small Pacific state who granted a personal interview.

As a result, in small states, there typically will only be a handful (if that) of officials that are experts in WTO law (Martin, 2021, 21 September) (Nottage, 2009). This leads to huge difficulties for legal teams and other representatives to the WTO in litigating disputes, but also in measure identification (Rodríguez, 2021, 31 August) (Simon, 2021, 17 September) (López, 2021, 26 July). This is as one of the most important points in engaging with the Dispute Settlement (DSM) is that the officials, usually the person/teams in Geneva or trade officials in the capital, can identify that there is a trade measure from another state that affects them that may not be consistent with WTO obligations (Rodríguez, 2021, 31 August) (Simon, 2021, 17 September) (López, 2021, 26 July). However, it can be difficult for small states with such small legal capacity and lack of legal expertise to identify such measures, and then to know the next steps on how to proceed (Rodríguez, 2021, 31 August). First, they need to know if the measure falls under the scope of the WTO, or if it falls under the scope of an FTA or RTA (Rodríguez, 2021, 31 August). Then if it does come under the scope of the WTO, they need to know which authorities to contact both in their own states and in the offending state (Rodríguez, 2021, 31 August). Further, they need to have a good enough understanding of WTO agreements to know if they should be escalating the issue (Rodríguez, 2021, 31 August). Then, they need the knowledge and experience to know when they should be utilising external counsel (Rodríguez, 2021, 31 August). This requires tremendous time, knowledge, and experience all before any actual litigation begins (Rodríguez, 2021, 31 August).

Experience within the system is another important factor that contributes to legal capacity. Experience utilising the DSM is helpful because it allows states to better understand the process, the unwritten rules and etiquette, as well as better understand the technical aspects of trade law (Hsieh, 2010, p. 1019) (Keoni, 2021, 31 August) (López, 2021, 26 July) (Muller, 2021, 25 August). For example, in the agreements and procedures meetings aren't described, so those who don't have experience won't know what to expect or how to prepare when going into a meeting for the first time (Muller, 2021, 25 August). Those with experience in the system might also have a better understanding of what the panellists might consider reasonable than those without that experience (López, 2021, 26 July). Further, those with experience in Geneva are able to build personal relationships with panellists, the Secretariat or the Director general, it is also easier to do this with bigger

teams (López, 2021, 26 July). There are further small things that it's difficult to know or understand if you've had no experience in disputes, such as the details of panel composition (López, 2021, 26 July). This experience doesn't have to be as a main party, but also as a third party, though you aren't getting the same experience, you will still be able to see a dispute from the inside allowing you to access submissions, attend oral hearings and the first substantive panel meeting, and submit written submissions, as well as build relationships within the WTO (Keoni, 2021, 31 August) (López, 2021, 26 July) (Muller, 2021, 25 August). Rights can be even greater for those who are granted enhanced third party rights, though of course the costs associated will also rise (Advisory Centre on WTO Law, 2004) (Pelc, 2017, p. 7). This is a common method that states use to build greater legal capacity, as well as maintain existing competencies, as you can be as active as you want as a third party, meaning that the economic barriers to participation are much lower than engagement as a complainant but still enables states to influence the ruling and gain experience, see Economic Capacity for cost breakdown (Aziz, 2021, 1 September) (Hansen, 2021, 1 September)[12] (Keoni, 2021, 31 August) (Martin, 2021, 21 September). (World Trade Organization, 2021a). Further, while experience as a main party is more favourable in terms of building and maintaining competencies, experience as a third party is often more beneficial as those small states who have engaged in the DSM, often build up capacity during a dispute, but then fail to maintain it when there are long periods without any engagement with the DSM (López, 2021, 26 July) (López, 2021, 26 July) (Simon, 2021, 17 September). For example, Switzerland, whose last two disputes as a main party were in 2018 and 2002 or Honduras, whose last dispute as a main party was in 2012 (World Trade Organization, 2020a). The importance of third party participation as a way to gain experience affordably has been highlighted for developing countries and LDCs (Albashar & Maniruzzaman, 2010, pp. 320-321).

Further, states can choose their level of involvement as a third party, so when there is greater relevance to the state they might choose to write lengthy submissions and attend all hearings, whereas when there is less relevance they might choose to just read the submissions and not attend oral hearings or the first panel meeting (Hansen, 2021, 1

[12] Axel Hansen (false name) is a trade official from a small northern European state who granted a personal interview.

September) (López, 2021, 26 July) (Martin, 2021, 21 September). An example of a state that has utilised this as a strategy to gain experience with the DSM is China (Aziz, 2021, 1 September) (Keoni, 2021, 31 August) (Martin, 2021, 21 September). China was a latecomer to the WTO, joining in 2001, since then they have made a policy of being a third party to almost every dispute they can and has participated as a third party in 189 disputes (World Trade Organization). While a high number of involvement in third parties is also a function of China's large economy and large number of trading partners, if we compare this number to the United States, which has an even larger economy and was a founding member of the GATT in 1948, has only participated as a third party 166 times (World Trade Organization). Another example is Norway, which tends to handle third party disputes in-house instead of contracting out to an external law firm as they usually do when they're a main party to build and maintain their competency (Hansen, 2021, 1 September). The Advisory Centre on WTO Law (ACWL) also encourages countries to participate as a third party as a capacity building measure (Martin, 2021, 21 September). In addition, states can choose to be neutral third parties, which may relieve small states of some of the fear of political or economic reprisal from larger states (see Political Constraints for further discussion), while still allowing them to gain vital experience (López, 2021, 26 July).

In addition, states that don't have representation in Geneva are going to be disadvantaged (López, 2021, 26 July). This is due to the importance of relationships with other delegations, as well as with those in the secretariat (López, 2021, 26 July). Being able to develop good ties with the secretariat and with the general director of the WTO is very important, but can be more difficult for small states, and very difficult for states without permanent representation in Geneva (López, 2021, 26 July). Additionally, it is not just capacity in Geneva that is needed, but also understanding and knowledge of government officials is extremely useful because often there will be notifications from the private sector when certain industries are being affected by trade measures (López, 2021, 26 July) (Muller, 2021, 25 August) (Rodríguez, 2021, 31 August). As such, if government officials also have that understanding of whether the measures come under the scope of the WTO, and how to move forward with the issue, it can be hugely beneficial to the small state (Rodríguez, 2021, 31 August). Further, government officials and politicians need to have the knowledge and understanding to be able to explain why they are using the DSM and what the state will gain

from doing so in order to justify the allocation of resources towards it (Muller, 2021, 25 August). As such, the depth of knowledge and experience of the teams dealing with these issues, as well as government officials and politicians, are also extremely, important not just their size.

Furthermore, legal capacity is reduced in small states due to their lack of individual lawyers who are actively litigating cases, putting together strategies, writing and presenting submissions, developing evidence for alleged violations, interpreting rules, when to bring certain arguments or give information and when you don't etc (Muller, 2021, 25 August) (Simon, 2021, 17 September) (López, 2021, 26 July). Having such skills, knowledge and experience is going to be key in how well they can do litigate in the WTO, which of course is going to be a significant factor in whether or not the panel rules in their favour (Muller, 2021, 25 August) (Simon, 2021, 17 September)[13] (López, 2021, 26 July). As such, lawyers from small states who are trying to litigate these disputes are going to be at a huge disadvantage when they are unable to develop their skills and knowledge through greater experience to the same degree as the lawyers from larger states can with lack of regular involvement. Having said this, when looking at the level of individual lawyers and experts there is also a danger of having one or two highly experienced and knowledgeable people in the department, states could then become dependent on the one person with knowledge (López, 2021, 26 July). An example of this can be seen in the departments of Guatemala and Norway.

An obviously important question is whether states have sufficient legal capacity to litigate dispute settlement cases and for almost every small state the answer is a resounding no, there is almost no small state that can litigate a dispute in the DSM without support (Aziz, 2021, 1 September) (Muller, 2021, 25 August) (Simon, 2021, 17 September). They simply do not have any specialised lawyers with the time, resources, experience and knowledge to act as main counsel in a dispute (Aziz, 2021, 1 September) (Martin, 2021, 21 September) (Muller, 2021, 25 August) (Rodríguez, 2021, 31 August) (Simon, 2021, 17 September). It is common for small states instead to just maintain a basic capacity, that is to be able to identify issues, understand what comes under the scope of the WTO, and understand the

quality of work being done by external counsel, but because of their constraints as a small state, they will contract out to external counsel for anything that falls outside of their competencies, which for most small states is the bulk of litigation (Nottage, 2009) (Simon, 2021, 17 September). Though it is important to point out that many small states, especially micro-states, small developing countries and LDCs struggle to build and maintain even this basic capacity (Simon, 2021, 17 September). As such, small states are distinctly disadvantaged as they almost always have to turn to external counsel, which is extremely expensive (Aziz, 2021, 1 September) (Simon, 2021, 17 September) (see Make or Buy?: External Council for further discussion).

The importance of legal capacity, particularly in regard to human capital capacity, in the DSM is supported in the dispute initiation literature. For example, empirical research has shown that even those small, developing countries that have the capacity to identify breaches, may not have the capacity to then pursue a dispute (Horn et al., 1999, p. 14). Further, it shows that limited legal capacity of less developed countries is particularly a factor in hindering their ability to file disputes (Busch et al., 2009, p. 572) (Busch & Reinhardt, 2002, p. 467) (Horn et al., 1999, p. 1) (Kuenzel, 2017, p. 174). This is particularly important as trade law becomes more complicated and thus greater expertise is needed to litigate in the DSM (Busch & Reinhardt, 2002, p. 467) (Horn et al., 1999, p. 14). Further, the general lack of expertise is also pointed to in the literature as a barrier for states to participate in the DSM, though usually point at this as an issue for developing states and LDCs (Tania, 2013, pp. 381-383). Other research has also highlighted the issues around lack of specialisation for developing countries, as well as the issue with lack of expertise and knowledge in the capital (Busch et al., 2009, pp. 572-573). Lack of experience has also been emphasised for developing countries as a barrier to participation (Busch et al., 2009, p. 574). What little literature there is looking at small states does support the idea that small states may have difficulty initiating disputes due to the lack of resources compared with larger states (Bown, 2005, p. 287). As such, this research supports the findings of the general literature by emphasising the limitation of legal capacity for involvement in the DSM and adds to it by showing how it disproportionally impacts small states and also is a factor for success as well as in initiation.

Addressing Legal Capacity

There are a huge variety of reforms and policy changes that could be undertaken to address the issue of legal capacity for small states in the DSM. Here I will discuss the most significant, though it is important to realise that there is a lot of overlap in this and other areas, and as such, each reform or policy change may also have impacts elsewhere, particularly regarding economic capacity constraints.

This section will begin by addressing system-level reforms that should take place to address legal capacity, namely WTO reforms and the creation of a small state organisation. It will then cover the actions that can be taken by individual small states to increase their legal capacity. Particularly, increasing experience with the system through third party participation and training programmes, as well as increasing specialisation and use of domestic counsel.

WTO reform

Likely the most effective option in addressing the legal capacity constraint facing small states to be is reform within the WTO. There are two primary ways that reforms can be made in the DSM. While all proposed WTO reforms will be difficult to implement, those that require major changes, such as structural changes within the DSM, will require amendments to the DSU and/or other WTO treaties (McDougall, 2018, p. 893). This will take a very long time, and of course, will require consensus and as such will be difficult and contentious (McDougall, 2018, p. 893). Changes to the DSM can also be made through authoritative interpretations by building on current DSU provisions that are ambiguous or inadequate (McDougall, 2018). The reforms that would likely to the greatest changes for small states' ability to successfully use the DSM is the introduction of a small state category in the WTO. Additionally, notification reform and the addition of explicit rulings would also be useful.

Small State Category

Further, the introduction of a clear distinction of small states as disadvantaged by their small statehood in dispute settlement proceedings would be useful. This is as many small

states do not fit into the 'small and vulnerable economies' (SVEs) category that the WTO unofficially uses, meaning there are no advantages for them despite the increased barriers to engagement and success for small states compared to middle and large states (Tesfaye, 2021, 31 August) (World Trade Organization). Small and vulnerable economies benefit from the Work Programme (World Trade Organization). A similar sub-category, even if also unofficial, could allow for similar programmes to benefit small states who are also more vulnerable to fluctuations in the world economy as SVEs are (World Trade Organization). Particularly, it could lead to the inclusion of small states in capacity building such as the training programmes by the WTO Secretariat's Training and Technical Cooperation Institute and any future training programmes or reforms (World Trade Organization, 2021b).

However, there is little political will for such a reform, as can be seen with the work programme on small economies which was agreed to in the Doha Round. This means that, among other things, small economies are to be a standing agenda item for the General Council (World Trade Organization). While this sounds positive, it is intended to "improve the integration of small economies into the multilateral trading system, without creating a separate category of WTO members" (World Trade Organization). As such, it would seem that this reform is unlikely, even though recognition of small state issues is necessary for small states to get the support they need. Especially considering that this work programme is aimed only at SVEs.

Notification Reform

Another area of concern is the low compliance with mandatory notifications in accordance with WTO Agreements (Hoekman & Wolfe, 2020, p. 11) (Wolfe, 2020, p. 1) (World Trade Organization, 2021c). The issue here is that the reason is not clearly known, as such research is desperately needed to pinpoint the primary reasons for low compliance so that this can be properly addressed (Wolfe, 2020, pp. 1-2). Due to these issues surrounding notification, the WTO Secretariat should be tasked with compiling public information on the national policies of all WTO members that impact trade (Hoekman & Mavroidis, 2021b, p. 7). Collaboration between the WTO and other relevant international organisations would be beneficial here such as the IMF and World Bank (Hoekman & Mavroidis, 2021b, p. 7). The creation of an easy to use, openly available to member states, and regularly updated

database would be hugely beneficial to small states. While this would be beneficial to all member states, it would particularly benefit small and developing states who don't have the capacity to monitor such measures as carefully as larger states. As such, it would reduce barriers for small states to utilise the DSM, especially those without basic capacity, and for those with basic capacity allow for resources to be allocated towards other pressing needs.

Explicit Rulings

Another reform of the DSM that could help small states to be more successful is for panel and appellate body rulings rule against defendants to explicitly state was needs to be done to comply with WTO law. This is an ability that panels have, but don't always use (Pauwelyn, 2000, p. 339). This could reduce costs for complainants because it would reduce the amount of work needed to be done for states to ensure that defendants are complying with rulings. Further, it would reduce the need for experienced specialist lawyers, as it will be much easier for states to determine if they are complying or not. Additionally, a decrease in ambiguity around compliance with rulings could decrease the work needed for compliance proceedings, as it would be clearer if states are complying or not, decreasing the burden on complainants in compliance proceedings. It also would likely not require DSU amendment and thus may be easier to implement than larger reforms.

Small State Organisation

Considering the huge challenge that small states would face in the struggle to gain recognition of small state issues in the DSM and the difficulty of reforming the WTO, I recommend the establishment of a small state-focused aid organisation similar to the ACWL. With funding from small states, larger states who are invested in the system and the WTO itself, such an organisation would be able to develop specialised teams with experience in utilising the DSM particularly from the perspective of a small state. Such an organisation could then allow participating small states to access experts with a specialised knowledge set, who have the time and ability to dedicate to dispute settlement.

Depending on the funding model, this could allow for free access to legal aid, external counsel, and capacity building, or to have a graded category system such as the ACWL,

except based on legal and economic capacity rather than on development level. This would allow developing and LDC small states to gain access to greater resources than more development small states, as they will have larger economic capacities, as well as still being able to access the ACWL and other aid due to development status. It will also allow for very small states, such as micro-states, to have greater access than their lower legal capacity would qualify them for, even if they are relatively wealthy.

As such, in the long term, an organisation like the ACWL that focuses on helping small states to access and be more successful in the DSM could be a useful substitute for substantial reform of the DSM or ACWL that is needed for small states to be more successful.

Individual Action: Capacity Building

In addition to system-level reform, small states should also look to their own legal capacity. Despite the economic capacity constraints which make this difficult, there are still a variety of methods that small states can utilise to build as much legal capacity as their economic constraints allow for. Most important is in gaining experience with the DSM, while of course engaging as a main party in the DSM is ideal, for small states the most useful and realistic options are through third party participation and training programmes. This increased experience and familiarity with the system may also help to alleviate the political fears of small states (see Political Constraints for further discussion). Further, small states can also increase their legal capacity by increasing specialisation and utilising domestic counsel.

Third-Party Participation

Small states should endeavour, where possible, to increase their levels of third-party participation. This serves two purposes, firstly to influence the panel's ruling and represent their own interests before the panel. For this, small states should, where financially feasible, endeavour to increase active participation in particular as this is likely to have more influence on panellists. However, of course, this needs to be balanced with economic considerations, as the more active a party is the more expensive it becomes. Secondly, it serves the purpose of giving small states greater exposure and experience within dispute settlement with a smaller burden compared to being involved as a main party allowing for

greater capacity building (see Economic Capacity for further discussion of costs) (Keoni, 2021, 31 August) (López, 2021, 26 July) (Muller, 2021, 25 August).

This is especially useful for small states who have particularly low legal capacity, such as developing states, LDCs, and micro-states. This is as they can participate as a less active third party, meaning they would not submit very long and thorough submissions, rather just attending hearings and/or following the dispute (Hansen, 2021, 1 September) (López, 2021, 26 July) (Martin, 2021, 21 September). This would allow states to build competence with lower levels of investment required compared to active third-party participation, as well as main party participation.

For small states that have a decent legal capacity such as New Zealand, third party participation can be used as an opportunity to litigate with external counsel as a support rather than the primary litigators (Martin, 2021, 21 September). This will allow them to benefit from the knowledge and experience of the external counsel, while still gaining experience and helping to build capacity as main counsel. Further, using these strategies could help to build up more independent legal capacity, but in a relatively low stakes environment as they are not main parties to the dispute. Further, in some cases where legal or economic capacity restricts involvement as a main party, states could petition to gain enhanced third party rights to have more involvement and influence on the proceedings (Hsieh, 2010, p. 1028). Though this has been rarely granted, it can still be a useful tool (Pelc, 2017, pp. 7-8).

Another benefit of small states engaging as a third party is that it also exposes the officials to the system and may, over time help to ease those political fears (Aziz, 2021, 1 September) (Martin, 2021, 21 September). Particularly, it may help to show that the DSM is a primarily technical process that is generally not subject to retaliation from trade partners or larger members, and it may help them to see the whole process as business as usual rather than the start of a trade war (Aziz, 2021, 1 September) (López, 2021, 26 July) (Martin, 2021, 21 September). This strategy of engaging as a third party is helpful, not just for gaining experience in Geneva, but also because it helps to update political decision-makers and technicians in Capital on the current situation, what may be in the interests of the state, what matters or measures may be of danger and where they might like to direct WTO case law as a result (López, 2021, 26 July).

Training Programmes

Another way that small states can gain experience in the DSM is by participation in capacity building programmes. Unfortunately, most of the capacity building programmes currently available are only for developing states and LDCs. For example, programmes run by the previously mentioned Training and Technical Cooperation Institute (World Trade Organization, 2021b). Further, the ACWL runs programmes for developing states and LDCs such as their annual courses, topical seminars, training sessions, and the Secondment Programme for Trade Lawyers (Advisory Centre on WTO Law). Small developing states and LDCs should take advantage of these programmes wherever possible. This further illustrates the need for a small state organisation that can organise similar capacity building programmes for small states, so as not to exclude developed small states with low legal capacity.

Further, domestic training programmes can be useful in developing greater legal capacity. For example, universities in China established WTO law specific colleges and graduate programmes, one of which is funded by the European Union (Hsieh, 2010, pp. 1009-1010). Small states could therefore benefit by funding greater investment into WTO specific education. Such programmes should focus not only on teaching WTO law but also on understanding its application (Hsieh, 2010, p. 1011). For non-English speaking countries, particular focus should be put on teaching competence in legal English (Hsieh, 2010, p. 1011). Further, participation in internships within government bodies, for example at the Permanent Mission to the WTO in Geneva, as well as in the WTO itself, would be hugely beneficial.

Additionally, participation in global moot court competitions should be encouraged (Hsieh, 2010, p. 1011). For example, the John H. Jackson Moot Court Competition on WTO Law, ELSA Moot Court Competition on WTO Law, and the Philip C. Jessup International Law Moot Court Competition (Aziz, 2021, 1 September) (Hsieh, 2010, pp. 1011-1012). Engagement in forums like this allows for greater capacity building within states in a way that is relatively affordable. Small states can also create incentives for law students not only to participate in such programmes and extra training but also to work for the government and not just for private law firms (Hsieh, 2010, p. 1012). As such, incentives such as scholarships, and attractive pay and benefits for specialised government lawyers are recommended.

Specialisation

As discussed, one of the biggest issues in small states' legal capacity is the lack of specialisation for teams dealing with WTO dispute settlement. As such, one of the best things that small states can do to allow for better outcomes in the DSM is to build well-resources specialised teams who deal solely with dispute settlement. Though for most small states this is simply not feasible. Resourcing the team is a domestic issue that will be unique to the case of each state. However, the state should be creating as much specialisation as possible within the resource capacity of that state. This means at the very least to have one member of the team who is solely devoted to dispute settlement without other duties in the WTO.

Domestic Counsel

Additionally, small states should also build capacity and experience in their own nations, not just in terms of their departments but by utilising domestic law firms as their external counsel alongside the more experienced and knowledgeable international law firms (Hsieh, 2010, pp. 1024-1025) (Rodríguez, 2021, 31 August). This can help foster local knowledge and experience and in the long term develop more knowledgeable and experienced lawyers in the country who not only will be beneficial in terms of their work on disputes themselves, but also pave the way for greater involvement in the WTO (Hsieh, 2010). For example, experienced lawyers may go on to become a panellist or AB members in the future, which is of course going to be politically desirable for small states whose citizens don’t tend to hold many prestigious positions (Hsieh, 2010, pp. 1024-1025). Further, engaging domestic firms to work alongside and learn from international firms is a way to build capacity in the country without massively increasing the resource cost (Hsieh, 2010, p. 1024). This is a strategy that has been utilised by larger states, particularly China and India, but because of the benefits in legal and resource capacity, it could be applied well to small states (Hsieh, 2010, pp. 1024-1025) (Rodríguez, 2021, 31 August).

Chapter Five: Factors in Success: Economic Capacity

Another one of the most important factors that hinder the success of small states in the dispute settlement mechanism (DSM) is their economic capacity (Hansen, 2021, 1 September) (Keoni, 2021, 31 August) (López, 2021, 26 July) (Martin, 2021, 21 September) (Simon, 2021, 17 September). Though a small economic capacity is not unique to small states it is an important feature. One common misconception by many, especially those from developing states, is that small, developed states are richer and therefore have all the necessary economic capacity to litigate in the DSM (Martin, 2021, 21 September) (Rodríguez, 2021, 31 August) (Simon, 2021, 17 September). However, this is not necessarily the case, and even small states with a high per capita GDP still have a small population and private sector in comparison to middle and large states and therefore have a smaller base from which to draw tax revenue (Bailes & Thorhallsson, 2017, p. 54) (Vital, 2006, p. 81). Further, the smaller the state the smaller their level of trade which can make it harder for small states to participate in such a costly procedure (Hsieh, 2010, p. 597). As such, even though they may be richer in comparison to small developing countries, they are still disadvantaged by their lower economic capacity in comparison to middle and large states and small developing states are even more disadvantaged.

We can see the impact of economic capacity by looking at the total average GDP of complainants in disputes with single complainants, to control for the confounding factor of multiple complainants, we can see that partially successful disputes have a 35.23% lower average GDP, compared to successful disputes (see Figure 3). With unsuccessful disputes being 177.1% lower than successful and 168.1% lower than partially successful disputes (see Figure 3). Though again, the small sample size of the unsuccessful category reduces the validity of this measure.

The cost factor as a significant barrier for involvement of states in the DSM is also supported by the literature around dispute initiation, though the literature has primarily focused on developing states and LDCS. Scholars have pointed out that because LDCs rarely engage with the DSM, it can be even more expensive for them due to their lack of expertise and experience (Tania, 2013, pp. 381-383).

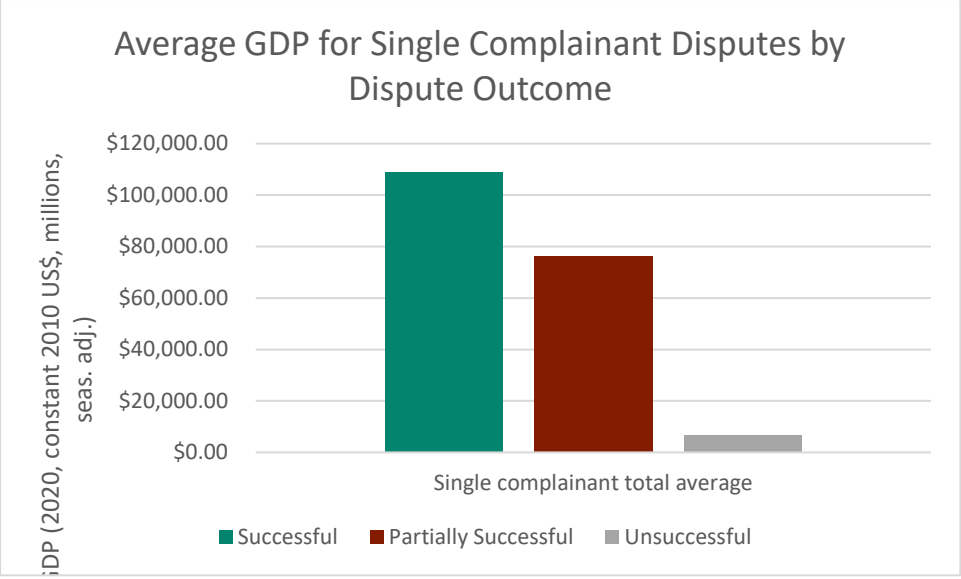

Figure 3 Average GDP for Single Complainant Disputes by Dispute Outcome. Source: WTO and World Bank Data

As such, it may be too expensive for an LDC to bring about a dispute compared to the cost borne from the offending trade policies (Tania, 2013, p. 383). Further, the limited literature there is looking specifically at small states supports the idea that small states may have higher barriers in initiating disputes due to the lack of resources compared with larger states (Bown, 2005, p. 287). The literature also shows the difficulty for small developing states to participate due to high litigation costs compared to the relatively small cost of the damage to exports (Hsieh, 2010, p. 597). Further, much of the literature does show that those with larger capacity constraints, particularly economic, are less likely to initiate disputes in the DSM, indicating the large barrier that low economic capacity presents (Guzman & Simmons, 2005, pp. 564-565).

The reason that the impact of economic capacity constraints is so large is that one of the main features of involvement in the DSM is that it is expensive (Muller, 2021, 25 August) (Simon, 2021, 17 September). Two main areas require significant funds, firstly in building and maintaining the legal capacity necessary to participate, whether that is a basic capacity or a larger more specialised capacity (Muller, 2021, 25 August) (Simon, 2021, 17 September). Obviously, the level of legal capacity will determine the cost of building and maintaining it, but even building and maintaining basic capacity is extremely costly. For example, for a state that has just one expert in World Trade Organisation (WTO) law and dispute settlement you need to account not just for the salary of the expert, but also the

costs of establishing and maintaining a permanent mission in Geneva, which as discussed is highly beneficial. As well as the cost of ongoing training, travel, engaging in disputes (at least as a third party) to build and maintain competence and support staff. The costs are very high even just to build and maintain this 'basic' capacity (Muller, 2021, 25 August). This is to the level that many small states, especially developing small states, simply can't afford it, and so they just don't participate because they know that they won't be able to succeed in the DSM without this basic capacity (Simon, 2021, 17 September). Further, to maintain a greater capacity, which involves having multiple experienced and specialised staff and support staff this cost rises significantly. This is likely one of the primary reasons that small states have engaged only 25% of disputes as a complainant compared to 53.6% and 77.2% for middle and large states respectively (Martin, 2021, 21 September)[14]. We also see low levels of engagement as a complainant for developing countries and almost non-existent engagement for LDCs with only Bangladesh's involvement in DS306 being the only case (Bown & Hoekman, 2005, p. 862) (World Trade Organization).

Secondly, the actual litigation of disputes is very expensive, especially for those who require external counsel (Nottage, 2009, p. 3) (Simon, 2021, 17 September). Small states almost always use external counsel, there is virtually no way for them to litigate disputes without help in some capacity, and usually as main counsel (Aziz, 2021, 1 September) (Hansen, 2021, 1 September) (Muller, 2021, 25 August) (Simon, 2021, 17 September). Further, the more stages that the dispute takes the more expensive it becomes, which is a growing problem due to the Appellate Body (AB) crisis meaning that many states simply 'appeal into the void' to avoid losing, putting huge costs on small states (Hansen, 2021, 1 September) (Lester, 2020, p. 3) (Nottage, 2009, p. 3) (Simon, 2021, 17 September). There has also been a trend, particularly among small states, to be engaged in disputes that are on more complex issues which require more technical submissions, making each stage more time consuming and labour intensive to put together submissions for (Muller, 2021, 25 August) (Nottage, 2009, p. 3). Small developing states and LDCs can access more affordable rates through the ACWL, but there is no such system for developed and transitioning small states, meaning that they have to bear the brunt of this cost with no aid, see Role of the ACWL for further discussion (Martin, 2021, 21 September). As such, the richer the small state the better able they are to

[14] Calculated from WTO dispute data

both build that capacity, but also to pay for external counsel (Martin, 2021, 21 September) (Rodríguez, 2021, 31 August).

In order to gain a better understanding of the cost of litigation, we must estimate these costs because we aren't able to directly access the average rates that external law firms charge. If we first look at what the ACWL's charges its highest development category members, 324 CHF or US$350 an hour, we can get an idea of the what the lowest level of subsidisation costs (Advisory Centre on WTO Law, 2004). While this is a much higher rate compared to their other categories, it is still subsidised, as such the costs are likely to be much higher (Advisory Centre on WTO Law, 2004) (Bown & Hoekman, 2005). We can see an indication of this in the fact that when the ACWL contracts external legal counsel for an LDC or developing country, usually when they cannot provide support due to a conflict of interests, external counsel will be paid 20% more than the ACWL's usual cost (Advisory Centre on WTO Law, 2007). Additionally, when there is a further discrepancy the ACWL bears that costs (Advisory Centre on WTO Law, 2007). As such, though we do not know the actual fees that are charged by external legal counsel for dispute settlement litigation we can estimate that it is at least 400 CHF or US$430 per hour. In comparison, some have argued that at the higher end many law firms charge US$750, or even higher, per hour (Nordström & Shaffer, 2008, p. 600). Further, according to some, private external counsel is likely to charge for more hours than the ACWL, as the ACWL often waives fees and underestimate the hours undertaken by two to three times less (Nordström & Shaffer, 2008, p. 600). The estimates for the number of hours it takes to litigate a dispute are based on the ACWL's time caps, multiplied by this estimation, see Table 2, Table 5, and Table 6 (Advisory Centre on WTO Law, 2004). We can see the estimates for the resulting cost in Table 3, Table 4, Table 5, Table 7, and Table 8. This indicates that the minimum amount a state can expect to pay for a dispute from the consultation stage right to the AB is US$221,020 and up to US$1,588,500, see Table 3 and Table 4.

Based on these estimations it is clear why many small states will settle disputes at the consultations stage despite not getting full concessions from the defendant, with costs ranging from $36,980 to $285,750 this could prove much more affordable for small states, especially considering the generally lower amount of money that is being disputed, see Table 3 and Table 4 (Nordström & Shaffer, 2008, p. 597). We can further see that the

estimated cost of negotiation of a mutually agreed solution ranges from $8,600 to $90,000, which is much more affordable again, see Table 5. Small states may also be more willing to settle because it is unknown how much a dispute will cost in advance, as such, this way they know they will reduce the costs and avoid going all the way to the AB and/or to compliance proceedings (Nordström & Shaffer, 2008, p. 601). Therefore, these states are not getting the best possible outcome, because they are more willing to settle to avoid higher costs.

Number of Hours for Legal Assistance to a Complainant			
Stage	**Low Complexity**	**Medium Complexity**	**High Complexity**
Consultations	86-129	160-240	254-381
Panel	286-429	512-768	822-1233
Appellate Body	142-213	216-324	336-504
Total	514-771	888-1332	1412-2118

Table 2 Estimated Number of hours worked on disputes by external law firms. Source: author calculations based on Advisory Centre on WTO Law (2004) and Nordström and Shaffer (2008).

Estimated Litigation Cost for a Complainant at US$430 (400 CHF) per hour			
Stage	**Low Complexity**	**Medium Complexity**	**High Complexity**
Consultations	$36,980-$55,470	$68,800-$103,200	$109,220-$163,830
Panel	$122,980-$184,470	$220,160-$330,240	$353,460-$530,190
Appellate Body	$61,060-$91,590	$92,880-$139,320	$144,480-$216,720
Total	$221,020-$331,530	$381,840-$572,760	$607,160-$910,740

Table 3 Estimated Cost of litigation using external law firm at US$430 per hour. Source: author calculations based on Advisory Centre on WTO Law (2004) and Nordström and Shaffer (2008).

Estimated Litigation Cost for a Complainant at US$750 (700 CHF) per hour			
Stage	**Low Complexity**	**Medium Complexity**	**High Complexity**
Consultations	$64,500-$96,750	$120,000-$180,000	$190,500-$285,750
Panel	$214,500-$321,750	$384,000-576,000	$616,500-$924,750
Appellate Body	$106,500-$159,750	$162,000-$243,000	$252,000-$378,000
Total	$385,500-$578,250	$666,000-$999,000	$1,059,000-$1,588,500

Table 4 Estimated Cost of litigation using external law firm at US$750 per hour. Source: author calculations based on Advisory Centre on WTO Law (2004) and Nordström and Shaffer (2008).

Assistance in Negotiation of a Mutually Agreed Solution			
	Low Complexity	**Medium Complexity**	**High Complexity**
Number of hours	20-30	40-60	80-120
Cost at US$430 per hour	$8,600-$12,900	$17,200-$25,800	$34,400-$51,600
Cost at US$750 per hour	$15,000-$22,500	$30,000-$45,000	$60,000-$90,000

Table 5 Estimated Time and cost of Assistance in Negotiation of a Mutually Agreed Solution. Source: author calculations based on Advisory Centre on WTO Law (2004) and Nordström and Shaffer (2008).

Number of Hours for Legal Assistance to a Third Party			
Stage	**Low Complexity**	**Medium Complexity**	**High Complexity**
Panel	110-165	162-243	222-333
Appellate Body	62-93	108-162	184-276
Total	172-258	270-405	406-609

Table 6 Estimated number of hours for legal assistance to a third party. Source: author calculations based on Advisory Centre on WTO Law (2004) and (Nordström & Shaffer, 2008).

Estimated Litigation Cost for a Third Party at US$430 (400 CHF) per hour			
Stage	**Low Complexity**	**Medium Complexity**	**High Complexity**
Panel	$47,300-$70,950	$69,660-$104,490	$95,460-$143,190
Appellate Body	$26,660-$39,990	$46,440-$69,660	$79,120-$118,680
Total	$73,960-$110,940	$116,100-$174,150	$174,580-$261,870

Table 7 Estimated litigation cost of a third party at US$430 per hour. Source: author calculations based on Advisory Centre on WTO Law (2004) and (Nordström & Shaffer, 2008).

Estimated Litigation Cost for a Third Party at US$750 (700 CHF) per hour			
Stage	**Low Complexity**	**Medium Complexity**	**High Complexity**
Panel	$82,500-$123,750	$121,500-$182,250	$166,500-$249,750
Appellate Body	$46,500-$69,750	$81,000-$121,500	$138,000-$207,000
Total	$129,000-$193,500	$202,500-$303,750	$304,500-$456,750

Table 8 Estimated litigation cost of a third party at US$750 per hour. Source: author calculations based on Advisory Centre on WTO Law (2004) and (Nordström & Shaffer, 2008).

Additionally, we can see that the costs of participating as a third party are significantly lower compared with as a complainant, with full litigation costs ranging from $110,940 to $456,750 for external counsel for a third party, see Table 7 and Table 8. Compared with $221,020 to $1,588,500 for external counsel for a complainant, see Table 3 and Table 4. This makes the costs two to three times higher for involvement as a main party.

Further, there are other non-litigation costs associated with the litigation of disputes. There are estimates of $100,000-200,000 for additional costs such as information gathering, economic assessments and expert witnesses (Bown & Hoekman, 2005, p. 870). Additional costs also can include travel and accommodation costs, which will be higher for states without permanent representation in Geneva, as well as paralegal and secretarial costs

(Bown & Hoekman, 2005, p. 870). When we also take into account the cost of preliminary and pre-litigation work these costs would rise hugely. Though estimates for these costs are much harder to find, this involves the identification of inconsistent measures, as well as a cost-benefit analysis of pursuing a dispute, followed by the process of getting approval from the domestic government, which often includes convincing officials in the capital to pursue the dispute (Bown & Hoekman, 2005, p. 869). Then if a state is successful in their dispute and there are compliance issues, there are costs associated with deciding on and implementing compliance proceedings and/or producing international support for the policy withdrawal to create pressure on the offending state (Bown & Hoekman, 2005, p. 869) (Simon, 2021, 17 September). Further, this could increase when taking into account the non-functioning AB (see Appealing into the Void: Appellate Body Crisis for further discussion). All of these can incur massive costs, especially for states who have less internal legal capacity, such as small states, and thus need more external conceal to do effectively.

Further, small states don't have the same ability to negotiate the prices of international law firms that other states do. Primarily due to the small number of cases compared to larger states who are still able to attract law firms despite lowering prices because they are more likely to provide a steady stream of disputes to litigate as well as paving the way for greater general practice in those large states (Hsieh, 2010, p. 1023). Small states aren't able to provide such benefits. The most prominent example is China, which tends to cap the cost of litigating cases rather than paying on an hourly basis as is customary (Hsieh, 2010, p. 1023). Further, they often have law firms bidding to take part in cases, allowing them to retain high quality and very experienced lawyers at much lower rates than is normal (Hsieh, 2010, p. 1023).

Another feature of small states in the DSM is that there is generally a lot more pressure internally to get a return for the investment in a dispute, as such costs may play a bigger role in decision-making around disputes (Keoni, 2021, 31 August) (López, 2021, 26 July) (Simon, 2021, 17 September). Small states are less likely to engage in disputes where WTO law is more ambiguous than large states are (Keoni, 2021, 31 August) (Muller, 2021, 25 August) (Simon, 2021, 17 September). As such, this is likely one of the reasons we see such a high rate of success (Simon, 2021, 17 September). Given these high costs for litigating in the DSM and the smaller economic and legal capacity of small states, most turn to external

counsel (Aziz, 2021, 1 September) (Hansen, 2021, 1 September) (Simon, 2021, 17 September).

Make or buy?: External Counsel

The real question for small states regarding the most effective use of their economic capacity in the DSM is whether they should use it to build and maintain sufficient and effective capacity to be able to participate in the DSM on a long-term basis, or should they use it to pay the expensive fees for external counsel to do it on their behalf (Simon, 2021, 17 September). As discussed, for many small states this is not a choice and external counsel is the only way they can participate in the DSM (Aziz, 2021, 1 September) (Hansen, 2021, 1 September) (Muller, 2021, 25 August). Some countries, typically middle and richer states, tend to go with a hybrid approach of having small but specialised in-house teams, which are then supplemented by external counsel (Aziz, 2021, 1 September) (Rodríguez, 2021, 31 August). The bulk of small states utilise a combination of in-house teams and external counsel, though it is extremely common for small states to have their main counsel be external and typically don't have the specialised and experienced teams we see in the hybrid approach of middle and rich states (Aziz, 2021, 1 September) (Simon, 2021, 17 September). It is also important to clarify here that, though the ACWL does provide external counsel services for a more affordable price, here we are discussing only the use of international law firms.

The biggest drawback of hiring external counsel is that they are extremely expensive, which can be a high burden for small states, especially small developing states (Tesfaye, 2021, 31 August) (Simon, 2021, 17 September). Disputes cost the same to litigate for small states as they would for large states, but their lower economic capacity means that this is a much greater limiting factor for small states, especially small developing states (see Economic Capacity for further discussion) (López, 2021, 26 July) (Simon, 2021, 17 September). As such, using in-house capacity is often cheaper in the short term, as the high cost of developing and maintaining in-house capacity is spread out over a longer period of time (Simon, 2021, 17 September). However, building and maintaining this capacity is generally much more expensive in the long term (Muller, 2021, 25 August) (Simon, 2021, 17 September). But this

turns into a cycle; states don't have the capacity because it's too expensive to build, so don't they participate, so they aren't able to build the capacity, so you can't litigate (Muller, 2021, 25 August). This is especially the case for small states, as they tend to be much less frequent users of the system, so not only is it much harder to maintain the capacity when you're not using the system very often but it is also seen as a waste of money when you're only litigating once every ten years but still have this redundant capacity (Rodríguez, 2021, 31 August) (Simon, 2021, 17 September).

Another disadvantage to using external counsel is that external lawyers don't understand the political and economic realities in the way lawyers and officials from the member state do (Rodríguez, 2021, 31 August) (Simon, 2021, 17 September). Therefore, there can sometimes be a disconnect between the litigation and the political and diplomatic aspects of disputes (Rodríguez, 2021, 31 August) (Simon, 2021, 17 September). This is particularly a problem for developed and richer small states who are better positioned economically to seek external counsel but still have this disconnect (Rodríguez, 2021, 31 August). This can be mitigated if the member state has a basic capacity so that they can work with external counsel to utilise all of their specialised knowledge and experience while being guided by someone from the member state (Rodríguez, 2021, 31 August) (Simon, 2021, 17 September).

Additionally, the longer the process goes, the most expensive litigation will become, which perhaps is an obvious assertion, but it is particularly relevant at the moment considering the complete dysfunction of the Appellate Body meaning that parties can 'appeal into the void' while small states are kept on the hook for paying their legal teams (Keoni, 2021, 31 August). While the situation while the AB is not easily solved, small states who have greater in-house capacity will be at an economic advantage as they have to continue to pay for this capacity regardless of whether they're using it unlike external law firms (Simon, 2021, 17 September). Though this has generally led to a disincentive for small states to engage to build capacity, it will be more beneficial until the AB crisis is resolved.

One of the biggest, and most obvious advantages to engaging with external law firms is that these lawyers and law teams have the experience, specialisation, knowledge and understanding of WTO law and contacts in Geneva that small states with low legal capacity are lacking (López, 2021, 26 July) (Muller, 2021, 25 August) (Simon, 2021, 17 September)

(Tesfaye, 2021, 31 August). This means that they can craft good arguments that have backing within the WTO legal framework, as well as choose appropriate legal strategies (López, 2021, 26 July) (Simon, 2021, 17 September). They have the knowledge and experience of how to navigate the DSM system from start to finish and often have a prior working history with important figures in Geneva which can be extremely valuable in navigating the process successfully (Muller, 2021, 25 August) (Simon, 2021, 17 September). External counsel also has the time and resources to process and produce the huge amount of material necessary for disputes that often small states don't have the human resources to handle (Muller, 2021, 25 August).

Further, external law firms are often more willing to engage in disputes than officials from a small state when there is a potential inconsistency with WTO law (López, 2021, 26 July). They also are often more willing to utilise certain legal strategies, for example, more aggressive legal strategies, or take a stand over an issue (López, 2021, 26 July). This is primarily because they aren't concerned by domestic factors, such as political will, or international factors, such as fears of retaliation because these don't affect them, they're just concerned with winning the dispute (López, 2021, 26 July). This can be viewed as both a benefit and disadvantage of utilising external counsel, because, on the one hand, their willingness to engage and to utilise all tools and strategies available to them may make them more likely to get a desirable result for the small states. But on the other hand, it might not necessarily be in the best interests of the small state overall when other factors are taken into account. This is why it is so important that small states have sufficient capacity to guide external counsel towards whatever outcome is most beneficial for their state (Simon, 2021, 17 September).

Another advantage of using external counsel as main counsel is that states can often find private-sector backers to help recoup some of the costs of individual disputes whereas the private sector wouldn't pay for building and maintaining in-house capacity (Muller, 2021, 25 August) (Simon, 2021, 17 September). This is not exclusive to small states, for example, Airbus helped to fund the Airbus-Boeing Dispute against the United States (Simon, 2021, 17 September). Given their smaller economic and legal capacity, small states benefit from this funding more than large states, which could afford to litigate regardless. However, small states also tend to have smaller and less developed private sectors and fewer mechanisms

for communication between the private and public sectors, especially small developing states and are therefore going to have more trouble finding financial backers (Muller, 2021, 25 August).

As such, while it is clear that ideally small states will have their own knowledgeable, specialised, experienced and Geneva-based legal teams to be successful in the DSM, this is just not feasible for almost any small state to achieve with their limited economic capacity. As a result, for most small states the best option to balance these two factors is to maintain as high a capacity as is possible given the economic capacity available to the small state and engage external counsel wherever is needed to fill in the gaps.

Addressing Economic Capacity

In order to address economic capacity, there are a variety of options. Firstly, on the system level, there are reforms to the WTO and the introduction of a small state organisation. On the individual state level, there is the 'buy or make' decision which will be unique to each state.

WTO reform

Three primary reforms to the WTO could help to alleviative the economic capacity constraints of small states. Most significant is the introduction of a small claims procedures and legal aid for those who aren't able to finance their disputes, as well as greater use of online platforms in the WTO.

Small Claims Procedure

A major reform that has been proposed to help address the capacity constraints faced by small states, particularly economic but also legal, is the introduction of a small claims procedure within the DSM (Nordström & Shaffer, 2008, pp. 593-597). That is, a procedure that is less time and economically intensive which focuses on disputes with smaller claims of damage (Nordström & Shaffer, 2008, pp. 593-597). The importance of a small claims procedure is that it is equally expensive to litigate large disputes as it is to litigate small disputes in the current system which unfairly disadvantages those with lower economic

capacity and small economies such as small states (Nordström & Shaffer, 2008, p. 598). This would allow small states to have access to a less costly litigation process, which not only may allow some small states to participate when they otherwise wouldn't but also more successfully as the lower litigation cost means that resources can be more effectively allocated to be most useful in such litigation (Nordström & Shaffer, 2008, pp. 593-597). Such a procedure would be particularly useful for small LDCs and microstates who have smaller economies, but also still useful for many larger and/or richer small states (Nordström & Shaffer, 2008, pp. 593-597).

We can turn to several examples of such a procedure as a starting point, for example, the Iran US Claims Tribunal and the United States Compensations Commission (Nordström & Shaffer, 2008, p. 612). In the former, two forms of claims could be made, those above US$250,000, which were to be self-funded and represented by complainants, and those that were below which presented and funded by the state of the complainant (Nordström & Shaffer, 2008, p. 612). For the former, priority was given to claims of US$100,00 or below (Nordström & Shaffer, 2008, p. 613).

As such, a similar claims procedure should be instituted in the DSM where priority is given to small claims over larger claims so that these claims can be litigated more quickly. This will reduce the resources associated with litigating small claims. While there are a lot of issues around such a procedure and questions that would need to be answered that do not fall under the scope of this research, most significant for small states is whether or not such a procedure should be open to middle and large states. Here we argue that it should only be open to small states, developing states, and LDCs, as developed middle and large states already have the capacity necessary to litigate, their having access to such a procedure would lessen its value in creating a more level playing field for small and developing states (Nordström & Shaffer, 2008, p. 612).

The creation of such a procedure is extremely complex and must be well designed and thought out to allow greater benefit for small states, especially developing small states and microstates and more research is needed into what this could look like.[15] While this reform

[15] For greater discussion around how this might look, see Nordström and Shaffer (2008).

would possibly be the most useful and transformative for small states, because of the massive change it would require amendments to the DSU and is unlikely to gain consensus.

Legal aid

An alternative to, or even better, in conjunction with, the introduction of a small claims procedure in the DSM is the introduction of legal aid for small states, as well as developing states (Nordström & Shaffer, 2008, p. 590). This is as, though still difficult, such an introduction would certainly be easier than the creation of a small claims procedure, but it would still help by reducing the cost of litigation for small states (Nordström & Shaffer, 2008, p. 599). Further, even though this can be viewed as a slightly easier to achieve alternative to a small claims procedure, ideally both would be created, as even a small claims procedure would be very difficult for some small states, particularly small LDCs and microstates, to litigate due to legal and economic capacity constraints. But the combination of legal aid and a small claim procedure could be an excellent solution that would allow such states to have successful outcomes (Nordström & Shaffer, 2008, pp. 599-600).

Firstly, the WTO should create a fund to administer financial support for states who wish to engage in a dispute but lack the funds to do so effectively. We can look to the International Court of Justice (ICJ) as a guide for how this might look (Bekker, 1993, pp. 659-660). These funds may be given to those who apply and meet the criteria (Bekker, 1993, p. 666). Secondly, it could include the introduction of a public prosecutor as is the case in domestic legal situations which is available to those who lack the funds for external counsel (Nordström & Shaffer, 2008, p. 590). Like the ICJ fund, such a fund, as well as access to a public prosecutor, should be based on the ability of states to pay for external counsel (Bekker, 1993, p. 663). As such, it would primarily benefit small states, developing states, and LDCs.

It would still be difficult to institute such a change, as the WTO does not currently have the mandate for this, and as such reform would be needed, likely through DSU amendments, which as discussed will be very difficult meaning that it would likely require additional funding for the WTO (Nordström & Shaffer, 2008, p. 599). As such, any state who does not directly benefit, mostly developed middle and large states, would likely be opposed to it, and therefore it would struggle to get the required consensus (Nordström & Shaffer, 2008, p. 599).

Online Platforms

Further, the Covid-19 pandemic has revealed the possibility of greater use of online platforms (Hoekman & Wolfe, 2020, pp. 14-16). This could be for a variety of WTO work, including assistance and training, decision-making, and virtual meetings (Hoekman & Wolfe, 2020, p. 14). This could allow small states who don't have the economic capacity to maintain a permanent mission in Geneva to gain some of the benefits of this, particularly regarding fostering personal relationships. Further, the use of virtual meetings for the WTO's 'thematic sessions' would allow for greater capacity building with lower economic barriers for small states (Hoekman & Wolfe, 2020, pp. 14-15). There are complications, especially for LDCs and developing countries without sufficient technical capabilities (Hoekman & Wolfe, 2020, p. 16). However, this could be a hugely beneficial change for small states. Overall, there seems to be significant support for greater use of technology for virtual meetings and communication, though the opinions on formal decision-making via online platforms is mixed (World Trade Organization, 2020b).

Small State Organisation

The earlier discussion of the creation of a small state organisation could also be useful in addressing economic capacity constraints as well legal capacity constraints. This is as, if modelled after the ACWL as suggested (see Addressing Legal Capacity for further discussion), then it will be able to provide free legal aid, as well as subsidized access to external counsel currently not available for developed small states and greater levels of support for small developing states. Further, such an organisation would have a permanent mission in Geneva which, when cost-sharing, wouldn't be cost-prohibitive, but could help those small states that don't have the resources to have a strong presence or any presence at all. This could allow a base that small states could send staff, perhaps in the form of a rotation for small states to be able to gain more experience in Geneva without as high a cost for each state. As such, it would not only allow for greater and more successful participation in the DSM but also greater capacity building within the usual high costs associated with it.

Individual Action: Make or Buy?

There is of course little that small states can do to increase their economic capacity. However, they can control the level of legal capacity they choose to build compared to the amount of external counsel they utilise in their disputes. While there is no correct answer for which level all small states should build their legal capacity up to, this is extremely individual and will depend on the small state, its priorities, its trade interests, and its economic capacity. However, all states should build at least a basic legal capacity. This means that they need at least enough capacity to be able to understand the quality of the work being done by external counsel, the outcomes they are looking for, where WTO law fits into the problem-solving equation, and an understanding of how strong a claim is as well as bringing in the perceptions and realities from the state, see Legal Capacity for further discussion (Simon, 2021, 17 September). Building this capacity may be easy for some and very difficult for others depending on economic capacity, but this should be viewed as a necessary baseline that can be increased wherever possible. As such, small states should not hesitate to utilise external counsel as main counsel in most, if not all, of their disputes, including when they participate as a third party, so long as they have at least this basic capacity. Those with larger economic capacities can then make the assessment as to whether the high cost of building further capacity is worth the benefits gained, particularly in regard to the better connection to the political and economic realities of the state that is lacking with external counsel. This decision will vary depending on the priorities of the state in question.

Chapter Six: Further Factors in Success

Though legal and economic capacity constraints are likely the most important factors in how successfully small states can navigate the dispute settlement mechanism, there are still a variety of other factors that are also significant. This includes the role of the Advisory Centre on WTO Law (ACWL), the utilisation of the Coalition Effect, the Appellate Body (AB) crisis, the retaliatory capacity of states, state's preference for other trade forums, political constraints, and the internal infrastructure, coordination, and stability of small states. This chapter will discuss each factor and how each factor can be best addressed or utilised in order to increase the chances of success.

All of these factors are relevant for states of all sizes and their ability to litigate in the DSM, however, as this chapter will discuss, these factors are more likely to have a greater impact on small states than on middle or large states. Many of them will also have a greater impact on developing states and less developed countries (LDCs) as well. Further, many of these factors are already discussed in the literature, primarily in regard to developing states, and usually when talking about barriers for entry such as in the dispute initiation literature. As such, this chapter draws from that literature, and attempts to fill the gap of small states and outcome.

Role of the ACWL

The ACWL is an international organisation whose purpose is to allow developing countries and LDCs the ability to participate in the WTO, especially its dispute settlement mechanism (Advisory Centre on WTO Law). The ACWL's importance cannot be understated, and for many countries, especially LDCs, using their services is the only way that they can participate in the DSM in any capacity. This is also very relevant to small states in the WTO as 46.85% and 21.95% of WTO member states are developing states and LDCs respectively, and of these 77.92% of the developing countries and 86.11% of the LDC's are considered small states by the definition laid out in chapter one[16]. Further, small states and developing

[16] Based on WTO data and World Bank development states designations. See Appendix 1 for state size.

states face a lot of similar constraints, so small states that are also developing or LDCs often have their constraints compounded, particularly regarding legal and economic capacity.

The ACWL provides three primary services. Firstly, legal services (Advisory Centre on WTO Law). Primarily providing guidance and advice on any questions of WTO law (Advisory Centre on WTO Law) (Martin, 2021, 21 September). This could be around the interpretation of WTO law or rulings, WTO institutional matters, which committee to present trade concerns to, and perhaps most importantly, the consistency of trade measures, either those taken by other member states or those taken/proposed by the member (Advisory Centre on WTO Law) (Martin, 2021, 21 September). This service is free of charge and is the most utilised by ACWL member states (Martin, 2021, 21 September). This can help states cope with their lack of legal capacity in general, but most importantly, it can help with their ability to identify measures that may be inconsistent and other preliminary work. This is as, while small states still have to come to the ACWL with questions about the consistency of measures it can help with the small in-house legal teams and lack of experienced and specialised team members with the expertise necessary to do identify if a measure falls under the scope of the WTO and if so, if the measure is actually inconsistent with WTO law (López, 2021, 26 July) (Rodríguez, 2021, 31 August) (Tesfaye, 2021, 31 August)[17].

Next is training, this is aimed at building capacity in developing countries and LDCs (Advisory Centre on WTO Law) (Martin, 2021, 21 September). In this training, they have annual courses, seminars and training sessions on topics of interest and panel and Appellate Body rulings, and a Secondment Programme for Trade Lawyers (Advisory Centre on WTO Law). This is also a free service (Martin, 2021, 21 September). This area is also extremely important for small (developing) states, as building capacity is severely limited in small states, especially small developing states, by human capital and economic constraints, (see Legal Capacity and Economic Capacity for further discussion). As such, this service helps to build capacity without incurring such high costs (Rodríguez, 2021, 31 August).

Lastly, the ACWL provides counsel for dispute settlement meaning that they function much like an external law firm (Martin, 2021, 21 September). They can litigate the entire case on

[17] Haile Tesfaye (false name) is a trade official from a small African state who granted a personal interview.

behalf of a member state, or they can assist with member states taking the lead in litigation (Martin, 2021, 21 September). The latter is often done with a mind towards training and capacity building and is especially utilised with more developed states who might have a larger capacity already, though this also tends to be larger states such as India (Martin, 2021, 21 September). This service isn't free but is heavily subsidised (Martin, 2021, 21 September). This is also extremely important for small (developing) states success in the DSM, both in the ability to access more experienced and specialised counsel for affordable rates, as well as in helping them to build capacity that may not otherwise be able to afford to build (Rodríguez, 2021, 31 August).

These services are accessible to all LDCs regardless of member status, and LDC's may also be able to access support for engagement as a third party for free (Advisory Centre on WTO Law). There are three categories of developing countries in the ACWL, category A being the most developed (for example, Hong Kong and Chinese Taipei), then category B (for example Egypt and Thailand), and category C (for example, Ecuador and Tunisia) (Advisory Centre on WTO Law). The level of subsidisation of support in dispute settlement proceedings depends on the category a state belongs to, categories A, B, and C pay 324 CHF or US$350, 243 CHF or US$260, and 162 CHF or US$175per hour respectively, with an LDC expecting to pay only 40 CHF or US$45 per hour (Advisory Centre on WTO Law, 2004, p. 2). States have access to between 257 and 706 hours of legal assistance depending on the degree of complexity for the dispute (Advisory Centre on WTO Law, 2004, p. 5). Developed countries are not able to access any service from the ACWL, though they can also become members (Advisory Centre on WTO Law). Much of the funding for the ACWL comes from these member states (for example, Canada, Denmark, Norway and Finland) (Advisory Centre on WTO Law) (Hansen, 2021, 1 September).

As such, the ACWL is a vital service for developing states, and especially for small developing states, in allowing them to participate more successfully in the DSM by giving them access to greater legal capacity, both through external support and capacity building, while also supporting them economically to reduce the barriers of economic constraints. Despite this, there are major flaws in the ACWL operation that can make successful disputes more difficult, especially for its small state members. Firstly, is that it doesn't aid in information collection, which as discussed, is a huge part of the burden for small states wanting to utilise

the DSM (Hsieh, 2010, p. 1020). Further, they do not have translations services, which provides an extra barrier to non-English speaking small states wanting to access their services (Hsieh, 2010, p. 1021). Lastly is the fact that developed small states cannot access any of the services despite their legal and economic capacity constraints in utilising the DSM.

Reform of the ACWL

The main reform of the ACWL that could take place to increase the chance of success in the DSM for small states would be the provision of support for small states as well as developing states and LDCs. Instead of the level of development being the primary factor in how much is paid legal capacity and level of available resources should be the primary factors. This will of course disproportionally benefit LDC's and developing countries, but it will also allow for the ACWL to assist those small states that are struggling with similar issues but are too developed to gain support under the current system. This could look like an added category to the levels of development, for example, 'developed states with low legal and economic capacity'. This would allow developed small states to access the free services of the ACWL, as well as subsidised counsel, though potentially at a higher price than developing states. However, this reform is unlikely to occur, as it would require changes to The Agreement Establishing the Advisory Centre on WTO Law (Martin, 2021, 21 September).

Small developing states should also be able to access a higher level of subsidisation of external counsel as middle states with a similar level of development. This is as they will be facing compounding constraints of being both small and developing. This would be more easily enacted, as it looks only at developing states. However, because the focus at the ACWL is entirely on developing states, it would still be difficult to implement due to a lack of political will.

Coalition Effect

Another important factor in small state success is the value of forming a coalition in the DSM. This can include a coalition of other complainants, which is probably the most

valuable, but also in terms of third parties. These seem to take several forms. Firstly, is in disputes where complainants request consultations jointly in a single document and the dispute is continued in such a way, with a single dispute number, a single panel, a single panel report etc. I will refer to this as a joint coalition. An example of these types of disputes is the Banana's disputes, where there was a strong coalition of American states (Guatemala; Honduras; Mexico; United States in two instances and also Ecuador in another) that initiated disputes as co-complainants (Request for Consultations by Guatemala) (Request for Consultations by Ecuador) (Request for Consultations by Honduras). These disputes tend to include large, middle, and small states as main parties. Further examples include US — Shrimp (DS58) and US — Offset Act (Byrd Amendment) (DS217). This seems to be the rarest form of coalition we see in the WTO, with just 5 examples out of the 28 case studies examined in the data of this thesis, 3 of which are from the Bananas disputes. Further, there have been only 14 in the entire history of the WTO, and just 6 with multiple complainants[18].

Secondly, is when states initiate separate disputes on the same issue. For example, EC-Scallops with Peru (DS12), Chile (DS14) and Canada (DS7). I will refer to this as an independent coalition. These often function similarly to joint coalitions, with panels and panel reports being completed together, for example, the Chile and Peru disputes had a joint panel report (DSU, 1994, p. Art. 9.2) (Muller, 2021, 25 August) (Panel Report). Though it is also common for panels to produce separate panel reports where the bulk of the report is the same, but the panel has additionally addressed differing arguments from states in each separate report, sometimes this will be done as a single document and sometimes as separate documents (and sometimes both) (DSU, 1994, p. Art. 9.2). For an example, see US – Steel Safeguards (DS248, 249, 251, 252, 253, 254, 258, 259) (Panel Report). For some disputes, panels may be convened jointly for some complainants and not for others. For example, in the EC-Scallops dispute, Chile and Peru had a joint panel and panel report and Canada has a separate proceeding, though they all had a mutually agreed solution (Panel Report). Whether or not there is a joint panel is usually at the request of complainants, though if there is a major substantive difference in the disputes a defendant might oppose this (DSU, 1994, p. Art. 9.2). This is as, under the DSU in such cases "single panel should be

[18] Numbers obtained from WTO case data.

established to examine such complaints whenever feasible" (DSU, 1994, p. Art. 9.1). However, typically in the case that there is not a joint panel the separate disputes will be presided over by the same panel members (DSU, 1994, p. 9.3). Further, when states request the establishment of the panel at different times, even if regarding the same measure, this can decrease the chance that they will have a joint panel for the dispute (Muller, 2021, 25 August). Disputes with joint panels are often more beneficial in terms of opportunities for collaboration (Muller, 2021, 25 August). This is as, they will be given the written submissions of other complainants and allowed to attend and communicate their viewpoints on the proceedings (Antoniadis, 2002, p. 292).

The third form of coalition is as a third party. I will referrer to this as a third party coalition. As third parties can also allow for greater cost-sharing and shared legal representation (Olsen, 2021, 17 September). Particularly if there are several panels on the same measure then the use of enhanced third party rights can allow third parties to gain access to more information and allow greater collaboration and greater consistency of decisions on related matters (Muller, 2021, 25 August). This is also significant in terms of outcome as some of the literature indicates the importance of third parties in shaping the topics of discussion in the early stages of a dispute, as well as an increased likelihood of a ruling in favour of the third parties' loyalties (Busch & Reinhardt, 2006, pp. 456-457 & 475). Further, the impact of a large number of third parties is shown with empirical research which shows that when there are 'mixed' opinions from third parties then the panel or AB members are more likely to refuse to issue a ruling (Busch & Pelc, 2010, p. 272). As such, the literature shows that panels do listen to the voice of third parties, therefore a strong third party coalition is more likely to have a significant impact on the ruling (Pelc, 2017, pp. 8-9).

Often when disputes are on the same general measures, different states will have different interests which may lead them to argue on the grounds of different WTO laws or to attack slightly different measures and as such not have identical claims (Muller, 2021, 25 August) (Olsen, 2021, 17 September). This can be the reason why a joint coalition or an independent coalition is chosen (Muller, 2021, 25 August). Further, independent coalitions allow for greater flexibility for individual states within a dispute which means states might be better able to advocate for their own interests than if they are more constrained by filing jointly, especially if their claims are not identical. Further, broader measures are going to affect

more states than more specific measures which will impact how many states are willing to join a coalition (Olsen, 2021, 17 September) (Rodríguez, 2021, 31 August). As such, the 'co-incidence of interest' is important in the potential for coalition building (Rodríguez, 2021, 31 August). For example, the EU's Regime for the Importation, Sale and Distribution of Bananas impacted all major exporters of bananas leading to several disputes with coalitions. In comparison, the US measures affecting the Cross-Border Supply of Gambling and Bettering Services was very targeted and thus very few states were impacting leading to one dispute, US — Gambling (DS285), with a single complainant (Antigua and Barbuda).

These coalitions are useful for several reasons. Perhaps most importantly for small states is that, in many circumstances, they can share the costs of using external counsel with both joint and independent coalitions (Olsen, 2021, 17 September) (Rodríguez, 2021, 31 August). This doesn't apply with certain states, for example, the United States and the EU use only in-house capacity and thus don't share litigation costs (Olsen, 2021, 17 September) (Simon, 2021, 17 September). However, for those that do, especially other small states and middle states, this can allow them to split the cost, as well as have shared representation which can increase the cohesiveness of the legal strategy and allow for very close cooperation (Muller, 2021, 25 August) (Olsen, 2021, 17 September) (Rodríguez, 2021, 31 August). This has been noted in the literature as a strategy for larger states, but this is an overlooked and little-discussed strategy for small and developing states despite its increased benefits for small states with their lower legal and economic capacities (Hsieh, 2010, p. 1030).

Even for coalitions with those larger states that don't share costs or other larger and middle states who prefer to retain separate representation, there is still often the benefit of sharing drafts and planning legal strategies with other members, at least for common aspects of a dispute if not for the whole dispute (Olsen, 2021, 17 September). This can reduce the burden on individual states, especially in regard to information and fact-finding (Hsieh, 2010, p. 1030). This is particularly the case with the EU who tends to encourage and participate in collaboration (Olsen, 2021, 17 September). For example, the cooperation between Canada, the US and the EU in China – Auto Parts shows the willingness of larger states to collaborate on disputes outside of cost-sharing (Hsieh, 2010, p. 1030). This is, again, going to disproportionately benefit small states who have smaller legal capacities and allow for a more cohesive legal strategy, increasing the chances of success.

Further, the use of joint and independent coalitions can increase the political weight of a dispute, especially compared to when a small state is acting alone (Rodríguez, 2021, 31 August). This can both help to give more weight to submissions before the panels but perhaps most significant is signalling both to the defendant and the world, that the complainant can't just be pushed around because they're small (López, 2021, 26 July) (Muller, 2021, 25 August). As such, the perception of small states as weak is defended against by creating a stronger coalition (López, 2021, 26 July). There is also often a perception that because it's a large state going up against a small state, they should always easily win, even if their measures are inconsistent with WTO law, which can make defendants more likely to stand their ground regardless of how likely they are to win or how right they are (López, 2021, 26 July). Large states also often feel as though they can get away with more when the complainant is a small state due to the power differential (Simon, 2021, 17 September). As such, creating a coalition even just with small states can help to mitigate against this pressure on large states to win created by the 'David versus Goliath' perception (López, 2021, 26 July). This could help to encourage large states to settle disputes or to comply with rulings rather than appealing into the void or not implementing rulings (López, 2021, 26 July). Further, having a coalition of states also increases the retaliatory capacity, as it is not just a single small state who has the potential for retaliation if the larger state does not bring its measures into compliance (see Retaliatory Capacity for further discussion). This could also provide greater pressure for large states to settle or to comply with panel and appellate body rulings.

Also of note is the importance of expertise in Geneva in terms of coalitions (Olsen, 2021, 17 September). That is, coalitions are often formed by those in Geneva, as well as general coordination and collaboration, especially regarding trade, which develops deeper relationships and can lead to greater collaboration in future disputes (Olsen, 2021, 17 September). As such, aside from the EU which goes mainly through Brussels, most states benefit hugely in the area of coalition-building by having permanent representation in Geneva, especially when they have larger numbers of personnel (Olsen, 2021, 17 September). Therefore, those states who don't, or have only small permanent representations, are at a disadvantage here, which is usually those who can benefit most from coalitions; small and developed countries. Capital to capital diplomatic channels are

also important, as well as having strong relationships between states more generally (Weber, 2021, 30 August).

This use of the Coalition Effect could be seen as a form of temporary shelter. The shelter is primarily economic, as the main benefits are in cost-sharing and increased likelihood of success, which has primarily economic considerations (Bailes & Thorhallsson, 2017, p. 53). However, it also provides societal shelter by increasing small states access to, and collaboration with, the expertise of other states, especially large and middle states who tend to have greater expertise than other small states technology (Bailes & Thorhallsson, 2017, p. 54) (Thorhallsson, 2019, p. 386). Further, it also provides political shelter, by increasing the political power and leverage that the small state has in that dispute (Bailes & Thorhallsson, 2017, pp. 52-53). As such, this idea of temporary shelter in the form of coalitions could be extremely useful for small states, both in the DSM, as well as in other forums and more generally in international relations. For example, temporary coalitions surrounding certain issues. This is because, as it stands there is an expectation of more permanent or long-term collaboration between small states and the larger power and/or international organisations they are seeking shelter with. As such, this temporary shelter provides some of the benefits of permanent or long-term shelter, in that it helps to build positive relationships between states, as well as increased political weight and building expertise in small states by that access to experts from other states. However, it also provides the flexibility of not utilising permanent or long-term shelter, particularly regarding the state not being forced to align itself with any one state or organisation permanently as is generally expected in long-term shelter situations. For example, New Zealand was forced to break the long-term shelter that it had from the United States in order to enact its Nuclear-Free policy rather than being able to react more flexibly than they would have under a more temporary form of shelter (Reitzig, 2006). The use of temporary shelter may be more useful for small states with relatively independent foreign policies, such as New Zealand. As such, the Coalition Effect is a useful tool in increasing the likelihood of success for small states in the DSM, as well as having larger implications for Shelter Theory.

Utilising the Coalition Effect

Another recommendation for small states in increasing their chances of success in the DSM is to enter into coalitions in their disputes as much as possible to harness the coalition

effect. This includes joint, independent, and third party coalitions. They should do this by actively seeking out those with similar interests in disputes. Ideally, this would be done before a dispute is launched so that they can coordinate well and increase the likelihood of a shared panel by requesting the establishment of a panel at the same time. Timing is especially relevant in independent coalitions (Muller, 2021, 25 August). The main ways that small states should look to help utilise the Coalition Effect is the creation of a small state organisation and through fostering relationships.

System Level: Small State Organisation

In addition to addressing legal and economic capacity constraints, a small state organisation would be an excellent tool for small states to form coalitions and better utilise the Coalition Effect. This is as it would be a useful forum that would help to build diplomatic ties in general, but particularly in the area of the DSM. Such an organisation would be particularly useful in forming third party coalitions between small states, as small states tend to join joint and independent coalitions with middle and large states rather than just other small states. Further, small state coalitions formed using connections gained from such a small state organisation would be able to access the subsidised legal counsel through the organisation, making the cost-sharing benefits of coalitions even greater. It may also be easier to find potential coalition partners through such a forum, as small states in this forum will be more likely to have similar interests and face similar constraints in participating in the DSM.

Individual Level: Fostering relationships

A further way that small states might individually be able to improve their chances of positive outcomes in the DSM is by fostering relationships. Firstly, in Geneva and at the WTO (López, 2021, 26 July). This could mean that those small states who do not currently have permanent representation in Geneva should consider the benefit of allowing closer relationships to make way for future coalitions despite the high costs (Olsen, 2021, 17 September). Secondly, in terms of creating a bigger and more effective diplomatic and trade network (Weber, 2021, 30 August). Though this is not going to be economically feasible for

most small states. Therefore, such small states should foster relationships through informal channels wherever possible as well as between capitals, and between the capital and the WTO Secretariat (Aziz, 2021, 1 September). Small states will also be better able to foster relationships with greater involvement in the DSM, and as such taking part in more disputes as a third party and taking part in training programmes with the WTO and ACWL where possible maybe also help with fostering closer relationships as well as building legal capacity.

Appealing into the Void: Appellate Body Crisis

WTO constraints are also limiting the success of small states in the DSM, in that, there are inherent flaws in the system that disproportionately impact small and developing states. Most significant are the issues with the Appellate Body. One of the main ongoing problems is the fact that it takes so long to go through the process, primarily because appeals are now almost always lodged (Aziz, 2021, 1 September). When the appeals process was first introduced it was intended to be a last resort, but now appealing a ruling is almost standard practice, and states must take this into account when initiating a dispute (Cottier, 2021, p. 515) (Keoni, 2021, 31 August). This has been shown in the literature with states who are ruled against in a dispute are more likely to appeal the decision, regardless of the odds of their winning the appeal (Bütler & Hauser, 2000, p. 527). One potential reason for this is that if an appeal is filed, they can postpone the implementation of changes that the WTO has ruled on (Bütler & Hauser, 2000, p. 527). This is especially significant, as the longer they drag a dispute out, the less time they are obligated to pay compensation or have sanctions enacted against them, as these are not calculated during the dispute (Bütler & Hauser, 2000, p. 528).

This especially impacts small states for two main reasons. Firstly, because small states have a lower economic capacity, meaning that a longer more drawn-out process requires more funds which is going to disproportionately impact small states compared to their large and middle counterparts, especially small developing states (Rodríguez, 2021, 31 August) (Tesfaye, 2021, 31 August). Secondly, because small states have smaller markets and are more reliant on exports and international trading, when there are long disputes the damage

to industry may already have been damaged beyond repair, which is going to have a disproportionately large impact on the entire economy of the state (Aziz, 2021, 1 September). Meaning that even if the small state eventually does get the offending measure removed, by the time this happens they may have already sustained severe damage to their industry or economy and for some, the investment into a dispute may not be worth it (Aziz, 2021, 1 September) (Rodríguez, 2021, 31 August) (Tesfaye, 2021, 31 August). This is another reason that small states may be more likely to accept a suboptimal settlement.

This constraint is only exacerbated by the current Appellate Body crisis which allows states to 'appeal into the void' (Hansen, 2021, 1 September) (Lester, 2020, p. 3) (Simon, 2021, 17 September). Since 2017, the US has been blocking the appointment and re-appointment of members of the AB, meaning that when the 4-year term ends for each appointment, there has been no one to replace them (Payosova, Hufbauer, & Schott, 2018, p. 1) (Schneider-Petsinger, 2020, p. 13) (Titievskaia, 2021). Since the 11th of December 2019, there have been less than three members sitting on the AB, which is the number required to hear new appeals and since December of 2020, there have been no sitting members of the AB, meaning that no appeals can be heard (Schneider-Petsinger, 2020, p. 13) (Titievskaia, 2021). As such, the appeals system is in limbo, waiting on new members to resume the appeals process and the US continues refusing to allow appointments. (Lester, 2020, p. 3) (Payosova et al., 2018, p. 1) (Schneider-Petsinger, 2020, p. 13). As such, for the time being, the DSM is essentially non-binding (Schneider-Petsinger, 2020, pp. 13-14).

The US has several concerns regarding the AB which have led to its refusal to appoint or reappoint members. This includes the long delay that often occurs in proceedings, despite the 90-day time limit (Hart & Murrill, 2021, pp. 6-8) (Lester, 2020, p. 3) (Schneider-Petsinger, 2020, p. 16). The fact that AB members often serve in appeals despite their term being over (Hart & Murrill, 2021, pp. 9-10) (Payosova et al., 2018, p. 3) (Schneider-Petsinger, 2020, p. 16). The practice of assessing panel findings of fact rather than just reviewing legal issues as well assessing matters not appealed, both of which are outside of its authority (Hart & Murrill, 2021, pp. 11-17) (Lester, 2020, pp. 2-3) (Payosova et al., 2018, p. 4) (Schneider-Petsinger, 2020, p. 16). There is agreement from many countries and WTO staff around these issues, however, there is debate about whether these issues constitute the 'judicial overreach' that the United States claims (Fiorini, Hoekman, Mavroidis, Saluste, & Wolfe,

2019, p. 695) (Payosova et al., 2018, p. 3) (Schneider-Petsinger, 2020, p. 17). Of course, these concerns are also important to many small states, but the lack of progress in the appeals process is of greater concern for most (Hansen, 2021, 1 September).

As a result of this crisis, many states simply 'appeal into the void' if they don't want to withdraw their measure, meaning that complainants are spending a huge amount of legal and economic capacity to litigate a dispute that likely won't be resolved in the near future (Hansen, 2021, 1 September) (Lester, 2020, p. 3) (López, 2021, 26 July) (Muller, 2021, 25 August) (Simon, 2021, 17 September). This impacts the chances of success for states as it generally means that there is no outcome and no need for larger states to withdraw their measure(s). At least there is no binding ruling forcing them to do so (Muller, 2021, 25 August). But it also means that states, small states especially, are often choosing not to initiate disputes because there is no point in using their limited economic and legal resources to litigate a dispute that will go nowhere (Aziz, 2021, 1 September) (Rodríguez, 2021, 31 August) (Tesfaye, 2021, 31 August). While the AB crisis impacts all WTO members, it is disproportionately impacting on small, and especially small and developing states, who don't have the resources to appeal into the avoid, and also don't have the resources to maintain complaints when appealed into the void (Keoni, 2021, 31 August) (Simon, 2021, 17 September).

A few temporary solutions have appeared to deal with the crisis, the primary solution has been the establishment of the Multi-Party Interim Appeal Arbitration Arrangement (MPIA), which is acting as an interim Appellate Body (Lester, 2020, p. 4) (Schneider-Petsinger, 2020, pp. 19-20) (Titievskaia, 2021). This interim appellate body has a pool of 10 arbitrators who hear appeals of panel reports, with three arbitrators hearing each appeal case (Lester, 2020, p. 3). While this solution is very useful and needed, it is also very limited (Hansen, 2021, 1 September). This is as it only includes 51[19] of 163 WTO members, and though the rulings under the MPIA are binding, signing up to it in the first place is voluntary, meaning that anyone who wants to appeal into the void can still do so simply by not joining (Hansen,

[19] As of December 2020, the MPIA's members are Australia, Austria, Belgium, Benin, Brazil, Bulgaria, Canada, Chile, China, Colombia, Costa Rica, Croatia, Cyprus, Czechia, Denmark, Ecuador, Estonia, EU, Finland, France, Germany, Greece, Guatemala, Hong Kong, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, Macao, Malta, Mexico, Montenegro, Netherlands, New Zealand, Nicaragua, Norway, Pakistan, Poland, Portugal, Romania, Singapore, Slovakia, Slovenia, Spain, Sweden, Switzerland, Ukraine, Uruguay.

2021, 1 September) (Hopewell, 2021, p. 1036) (Keoni, 2021, 31 August) (Lester, 2020, p. 3) (Schneider-Petsinger, 2020, p. 20). Further, the United States is not a member, which is a major issue because the US has been a party to over 70% of WTO cases.[20] Further, there are other concerns around the US' lack of participation in the MPIA meaning that they become a free rider, benefiting from the system and thus less likely to want to change the arrangements by allowing new appointments to the AB (Schneider-Petsinger, 2020, p. 20). Another issue with the MPIA is that some states have not taken part out of fear of economic or political retaliation from the United States, further limiting its usefulness (Hopewell, 2021, pp. 1036-1037).

Secondly, some states have enacted enforcement laws in the absence of a functioning Appellate Body. In particular, the EU has introduced a new enforcement regulation that allows them to utilise enforcement measures such as unilateral countermeasures in the absence of compliance with a panel ruling without authorisation from the WTO (EU Regulation 2021/167, 2021). While such national (or international in the case of the EU) laws and regulations may be serviceable solutions for large, and maybe some middle, states, this solution would likely not work for small states. Primarily due to their lack of retaliatory capacity (see Retaliatory Capacity for further discussion), but also due to the lack of power and leverage small states have in the international system. As without WTO backing, launching countermeasures against other states may be seen as an act of economic war.

Lastly, some states have concluded bilateral agreements to avoid the appeals process (Schneider-Petsinger, 2020, p. 20). For example, Indonesia and Vietnam agreed not to appeal a 2019 dispute after the panel ruling (Understanding Regarding Procedures). As such, despite these temporary solutions, as it sits in November of 2021, there is no available mechanism by which small states can consistently and reliably access a binding appeals system and thus enforce DSM panel rulings (Tesfaye, 2021, 31 August).

Addressing the Appellate Body Crisis

In terms of the Appellate Body, two main areas are imperative to examine. Firstly, the solving of the immediate crisis, that is to get new appointments to the AB and have a functioning appeals system again. Secondly, is how we can reform the AB and the dispute

[20] Numbers calculated from WTO dispute data

settlement mechanism as a whole in the long term to address the issues that lead to the crisis and prevent it from reoccurring (Hoekman & Mavroidis, 2021a, p. 5). This crisis is disproportionately affecting small states, as well as developing states and LDC's who lack the resources and capacity to keep a dispute going when they could just be 'appealed into the void'. Further, in the long term, this damages the reputation of the dispute settlement mechanism as a useful tool for small states to engage with, as well as in turn hurting the rules-based system that small states rely so heavily upon. As such, solving this crisis is vital to achieving better outcomes for small states.

Solving the Crisis

Recommendations on how to solve the appellate body crisis are difficult, as we could solve the issues that the United States has laid out, but this brings no guarantee that new appointments to the AB would follow. Despite this, the best starting point for getting the AB running again is the so-called 'Walker Principles proposed by Dr David Walker (Walker, 2019). These principles lay out explicit transitional rules for outgoing AB members, reaffirm the 90 day AB report deadline, rejects the use of advisory opinions, assert that precedent is not set by the DSM, rejection of AB overreach and establish a mechanism for "regular dialogue between WTO Members and the Appellate Body" (Walker, 2019, pp. 5-6). While this goes far to address the concerns of the United States, representatives have said that it does not go far enough in addressing the systemic concerns around the AB "not respecting the current, clear language of the DSU" (Shea, 2019). The US has said that "we need to find a way to ensure the system operates as agreed by Members" suggesting that they are looking for greater restrictions on the AB and even consequences or some sort of enforcement mechanism to guarantee this. However, they have not made their expectations clear except to say that no progress can be made towards addressing their concerns until the reasons why the AB felt "free to disregard the clear text of the agreements" are uncovered (Shea, 2019).

Others have suggested that this is actually a 'judicial attitude' problem, making it infinitely harder to solve than a legal issue (Howse, 2021, p. 71). As such, they believe that the Trump Administration's true goal was to return to a pre-WTO, GATT style dispute settlement mechanism with no appellate body, and far less force (Howse, 2021, pp. 71-72). How this attitude might change under the new Biden Administration, considering their far more

multilateral approach, is yet to be seen (Howse, 2021, p. 72). However, considering some of the actions of the Biden Administration so far, such as re-signing the Paris Climate Accord, and more generally the rolling back of Trump era isolationist policies provides a lot of hope for the AB going forward (Howse, 2021, p. 72) (Milman, 2021). There is especially hope that the Biden Administration may revoke the Trump Administration's rejection of the Walker Principles and use them as a starting point in getting the AB running again, and allowing for long term reform to happen subsequently (Howse, 2021, p. 79). Further, the appointment of a new roster of AB members could allow for a change in judicial attitude along with new guidelines set out before the appointment process begins (Howse, 2021, p. 79).

Long Term Reform

Perhaps most significantly, long term reform of the appellate body is clearly necessary. One of the reforms that could have the most impact in preventing a similar appellate body crisis, and ensuring a smoother functioning of the WTO in general, is to do away with the consensus requirement in favour of a majority or absolute majority vote (Gao, 2021, pp. 544-545) (Hoekman & Mavroidis, 2021a, p. 4) (Hoekman & Mavroidis, 2021b, p. 6) (Howse, 2021, p. 75). Importantly, this is not concerning the negotiation and implementation of substantive policies or agreements (Hoekman & Mavroidis, 2021a, p. 4) (Hoekman & Mavroidis, 2021b, p. 6). Rather, only for the day-to-day function of the WTO and regarding areas that have already been agreed to by members (Gao, 2021, pp. 544-545) (Hoekman & Mavroidis, 2021a, p. 4) (Hoekman & Mavroidis, 2021b, p. 6). This will prevent crises like the United States blocking new appointments and members states blocking agenda-setting of WTO committee meetings.

Reform of the Appellate Body itself, as well as the appointment procedure, is also necessary for preventing the build-up of grievances that led to the US blocking appointments. Many scholars have suggested the creation of a roster of 15-20 permanent and/or full-time panel panellist and/or chairs to streamline panel composition as well as increase the quality of rulings with experts in different areas of WTO law able to preside over relevant disputes (Bacchus & Lester, 2019, p. 4) (Busch & Pelc, 2009, p. 580) (Davey, 2003) (Hoekman & Mavroidis, 2020, p. 712) (Hoekman & Mavroidis, 2021a, pp. 11-12) (Weiler, 2001, p. 202). This increased quality of rulings could in turn lead to a reduced need for the AB to review rulings, which would reduce the caseload of the AB and therefore delays (Busch & Pelc,

2009) (Davey, 2003, p. 179) (Hoekman & Mavroidis, 2020, p. 712) (Hoekman & Mavroidis, 2021a, p. 11). This would also mean that the WTO Secretariat would have less of an influence on the process, especially in the appointment of panellists and the drafting of reports (Busch & Pelc, 2009, p. 583) (Davey, 2003, pp. 181-182) (Hoekman & Mavroidis, 2021a). However, this proposal seems to have little support outside of the EU (Hoekman & Mavroidis, 2021a, pp. 11-12). Most important. according to some research, is the experience of the Chair, as such, it can be recommended that at least a roster of full-time and experienced chairs should be created considering the lack of support for the full roster of panellists (Busch & Pelc, 2009, p. 593) (Cottier, 2021, p. 532). Other reforms of the panel include extending terms to 8-10 years (Hoekman & Mavroidis, 2021a, p. 23). Creating larger panels of seven for more important disputes, and retaining the panel of three for less important disputes (Hoekman & Mavroidis, 2021a, p. 23). Such changes would require DSU amendments, particularly Article 8 (DSU, 1994, Article 8) (Hoekman & Mavroidis, 2020, p. 713).

Further, to address the United States' concerns, as well as other members states, about the influence of the WTO and AB Secretariats on rulings and on drafting reports, it has been suggested that panellists and AB members should select their own clerks and/or that there be limits on the length of time members of the Secretariat can serve (McDougall, 2018, pp. 891-892) (Hoekman & Mavroidis, 2020, p. 715) (Hoekman & Mavroidis, 2021a, p. 24). This would be primarily useful in the case that permanent panellists and AB members have been appointed, as they will no longer be reliant on the Secretariat for legal advice (Hoekman & Mavroidis, 2020, pp. 714-715). Further, it may help to facilitate a better judicial attitude, by creating trust between panellist and their clerks (Hoekman & Mavroidis, 2020, p. 715).

Scholars have also argued for the creation of a group of experts in WTO law, including lawyers, economists and those with extensive WTO experience, to screen the nominations of WTO member states to ensure the quality of panellists and AB members and to mitigate the possibility of political appointees (Hoekman & Mavroidis, 2020, p. 714) (Hoekman & Mavroidis, 2021a, p. 23) (Weiler, 2001, pp. 205-206). This will help to increase the quality of the rulings at both levels and help to alleviate some of the concerns the United States has around judicial attitude (Hoekman & Mavroidis, 2021a). This is partially because it is believed that lack of expertise from panellists and AB members is one of the reasons that

there is such a strong influence on appointments from the Secretariat (Hoekman & Mavroidis, 2021a, p. 24).

As such, the Appellate Body crisis is a significant issue that is hugely impacting the functioning of the DSM and especially impacting on small states. However, it is a complex issue and likely a mix of these recommendations will need to be taken to restore the functioning of the AB and prevent another crisis.

Individual Actions: Temporary Solutions to the Appellate Body Crisis

Another, relatively simple, way that small states can help to increase the chance of success in their disputes is by engaging in the MPIA. While this is a temporary solution and very flawed, it is still the best option available for small states to come to resolutions in some disputes without a functioning AB. It is only binding for members, so while it may have downsides, in that only disputes between parties who are both members of the MPIA will be able to utilise it, it is still better than nothing (Hopewell, 2021, p. 1036) (Lester, 2020, p. 3) (Schneider-Petsinger, 2020, p. 20). Further, small states should endeavour to sign bilateral agreements agreeing not to appeal when engaging in disputes with non-members wherever possible.

Retaliatory Capacity

Another factor that can impact the success of small states in the DSM is their retaliatory capacity. Retaliatory capacity refers to a states' capacity to meaningfully retaliate against another state when they have successfully brought a case to the DSM, gone through compliance proceedings and been granted the right to retaliation (Bown, 2004a, p. 60) (Hudec, 2002, p. 81) (Nottage, 2009, p. 5) (Olsen, 2021, 17 September). This retaliation is in the form of suspension of concessions (Charnovitz, 2001, pp. 792-793). The size of the exports of the defendant to the complainant in a dispute is particularly important in the complainant having retaliatory capacity (Bown, 2004a, p. 71). Though this feature of the DSM has traditionally been studied in relation to developing countries, it applies to most, if not all, small states as well (Bown, 2004a) (Bown & Hoekman, 2005) (Nottage, 2009). Retaliatory capacity is hugely reduced for small states compared to middle and large states due to their low economic capacity, and their lower levels of trade flow in relation to middle

and larger states, and most significantly, their small market size (Bown, 2004a, p. 68) (Bown & Hoekman, 2005, p. 863) (Martin, 2021, 21 September) (Nottage, 2009, p. 6]). The relationship between states is also important for retaliatory capacity, as, if there is not a major trade relationship between states, then retaliatory capacity will be low, as any retaliation a state might do will have a low impact on the exports of that state (Olsen, 2021, 17 September). However, this case is quite rare for small states, as, due to economic capacity constraints, small states are unlikely to bring any disputes against trade partners with whom they don't have a very large portion of their trade (Aziz, 2021, 1 September).

A more likely scenario for small states is that they have brought a case against a state who is one of their largest trading partners, but their trade is insignificant to that large state (Nottage, 2009, p. 6) (Olsen, 2021, 17 September). For example, for New Zealand, China is its largest trading partner, making up around 32% of exports, whereas for China, New Zealand doesn't even crack the top 20 (New Zealand Statistics, 2021) (The World Bank, 2021a). As such, any retaliatory action that New Zealand could take against China will be negligible to their overall levels of trade and as such cannot serve as a useful tool to force action (Hudec, 2002, p. 81) (Martin, 2021, 21 September) (Nottage, 2009, p. 6) (Olsen, 2021, 17 September). Further, in enacting any sort of retaliatory action, the small state will harm its own industries, which tend to be heavily dependent on exportation and thus this is often harmful to the small state's own economy (Nottage, 2009, p. 7) (Tesfaye, 2021, 31 August). This is especially in the case where the small state imports a significant amount from the larger state, as the increased cost of goods would harm its consumers more than the countermeasures would harm the larger state (Nottage, 2009, p. 7). As such, small states' reduced retaliatory capacity makes such threats less credible and less powerful, making this a much less useful tool for small states compared to their large and middle counterparts. There is also empirical research to suggest that the threat of retaliation, even when not approved by the DSM, can be an effective tool in inducing compliance, as such small states are lacking this additional tool to induce compliance that larger and middle states have (Bown, 2004a, pp. 68-74) (Bown, 2004b, pp. 812-813).

US-Gambling (DS285) is the classic example of a lack of retaliatory capacity leading to no implementation of rulings. Both panel and appellate body rulings were largely in favour of Antigua and Barbuda, and they were eventually granted permission to retaliate in January

2013 and yet still the United States has not complied with the ruling (Appellate Body Report) (Miles, 2018) (Panel Report). Antigua and Barbuda asked for a settlement rather than to use trade sanctions to gain its lost value, because of the extremely tiny impact this would have on the US economy and the massive damage it could do to its own economy, but they haven't received any compensation thus far (Bown, 2004a, p. 68) (Miles, 2018) (Nottage, 2009, pp. 6-7).

Though it is important to note that this factor is likely not fully reflected in the data, as many small states make the decision not to go through the DSM when they think they have a low chance of compliance, even if they believe they have a high chance of success in panel proceedings, because the cost is so high, for many it's just not worth it to engage if their investment is not going to be recouped (López, 2021, 26 July). Further, small states might be more willing to accept a settlement that isn't optimal if they believe that the likelihood of compliance is low because it may do less harm for their economy than a long-winded dispute that doesn't end in compliance. This is conclusion is supported in the literature, with some scholars arguing that 'weaker' states tend to withdraw cases before a GATT ruling is issued at far higher rates than more powerful states (Hudec, 1993, pp. 97-98).

As such, the high compliance rates and low utilisation of the right to retaliate that is seen in the literature as a success of the DSM and as evidence that low retaliatory capacity is not a significant or common factor in compliance rates is ignoring the fact that states who see this as an insurmountable obstacle in the DSM will just not use the DSM or will not retaliate when they have the opportunity (Hudec, 2002) (Nottage, 2009) (Wilson, 2007). Of course, these states are primarily small and/or developing. As such, it is not necessarily a success and perhaps even a failing. Therefore, when small states undertake such retaliatory action, they are less likely to have a successful outcome compared to when a larger or middle state undertakes the same action, due to their reduced retaliatory capacity (Bown & Hoekman, 2005, p. 865) (López, 2021, 26 July) (Nottage, 2009, p. 8). As a result of this, many small states will avoid using sanctions, and sometimes even the DSM altogether, as it is seen as useless if unable to be enforced effectively (Martin, 2021, 21 September) (Nottage, 2009).

These conclusions are supported by much of the literature around dispute initiation, where some scholars have found that small states may be less likely to file disputes as they have less capacity to enforce any rulings compared to larger states and therefore don't see the

value in filing disputes (Bown, 2005, p. 287) (Horn et al., 1999, p. 1) (Tania, 2013, pp. 381-384). This is as they are unable to make a big enough impact on any economy through trade sanctions for it to be worth the cost of litigation (Tania, 2013, p. 384) (Bown, 2005, p. 291). However, this is still debated in the literature with some scholars arguing that relative economic size and relative income do not have a significant impact (Sattler & Bernauer, 2011, p. 156). Further, the literature surrounding successful outcomes, though usually defined as increased liberalisation, also suggests that the threat of retaliation is a significant factor in an increased likelihood of liberalisation (Bown, 2004b, pp. 812-813) (Syropoulos, 2002, p. 721).

Addressing Retaliatory Capacity

There is little that small states can do to increase their retaliatory capacity and as such in order to address the reduced retaliatory capacity of small states in the DSM we must look to the system level and reforms of WTO sanctions. This could include collective retaliation, membership sanctions, or and/or monetary compensation.

One major reform that would help small states be more successful is increasing retaliatory capacity through the use of collective retaliation or collective sanctions (Hoekman & Mavroidis, 2021a, p. 12). Collective sanctions can be beneficial because they produce a lot more pressure on states than regular sanctions as all WTO members would impose sanctions on the offending states rather than just the complainant (Nzelibe, 2005, p. 219) (Pauwelyn, 2000, pp. 342-345). The fact that collective sanctions produce greater pressure on offending states than the current retaliation system means that such a system may appeal to small states in particular. However, for such a policy to be implemented there would have to be significant support, which is unlikely considering the level of sovereignty that would have to be surrendered to the WTO to force its members to raise tariffs against other members (Hoekman & Mavroidis, 2021a, p. 12). There was significant support, especially from, developing countries that would also benefit from this policy, but the lure of aid from developed countries was too strong (Hoekman & Mavroidis, 2021a, p. 12).

An alternative to collective sanctions that scholars have proposed is membership sanctions, that is, the offending state is no longer able to access the benefits of belonging to that

organisation (Charnovitz, 2001, p. 827). For example, the right to be involved in decision-making or to gain economic aid such as utilised by the IMF (Charnovitz, 2001, p. 827). These examples are not applicable in the WTO, as these rarely occur anyway, but some have suggested that an offending state be ineligible to utilise dispute settlement until they bring their trade policy into compliance (Charnovitz, 2001, pp. 827-828). While this would not give any direct benefits to small states as other types of sanctions do, in the form of higher tariffs, for example, it would still increase the effectiveness of the enforcement mechanism, which is particularly weak for small states due to their lack of retaliatory capacity. Though the introduction of collective sanctions would likely be more beneficial for small states, due to the direct benefits gained compared to membership sanctions, this could be an easier alternative to implement.

Further, small states would benefit from the introduction of monetary compensation in the form of fines either instead of or in conjunction with, countermeasures (Nzelibe, 2005, pp. 218-219) (Pauwelyn, 2000, pp. 342-345). Monetary compensation can be a desirable alternative to sanctions as it does not have negative impacts on the impacted states as retaliatory sanctions do, which is going to aid small states especially as these tend to have greater impacts for small, trade dependant economies (Nordström & Shaffer, 2008, pp. 590-591) (Nzelibe, 2005, pp. 218-219). Further, some argue that fines would be a more effective compliance measure than sanctions are because states would directly bear the cost of their policies rather than individuals and industries as is the case with sanctions (Charnovitz, 2001, p. 827). This is an issue without an overarching authority that can effectively collect payments leading to high transaction costs (Charnovitz, 2001, p. 826) (Nzelibe, 2005, p. 219). Some have argued that enforcement through domestic courts could be the answer to this (Charnovitz, 2001, p. 826). Though any state that would pay a fine would be less likely to implement policies that result in a fine in the first place, as such the main problems this policies faces are lack of enforcement ability and the difficulty in passing such a reform with consensus decision-making (Charnovitz, 2001, p. 827). Despite this, such a reform would be desirable, especially for small states and developing countries to compensate for their lack of retaliatory capacity (Fiorini et al., 2019, p. 693).

Preference for Alternative Trade Forums

Another aspect related to economic capacity is that many small states, particularly developing small states, have a preference for working within bilateral, PTA, or RTA forums compared with the DSM when there are issues with trade obligations (Aziz, 2021, 1 September) (Muller, 2021, 25 August) (Tesfaye, 2021, 31 August). This preference for other trade forums has also been documented in regard to developing countries in the literature (Fiorini et al., 2019, p. 693).

One reason that some small states prefer to utilise alternative trade forums is that there tend to be more rules and mechanisms to eliminate issues compared to the purposefully vague language utilised in many of the WTO's founding documents (Tesfaye, 2021, 31 August). This is partially because they tend to build on the standards of the WTO (Tesfaye, 2021, 31 August). This can make it much harder for countries with smaller legal capacity, especially regarding lack of specialised experts, to interpret WTO law, as well as making it harder to identify whether or not measures are actually inconsistent with WTO obligations. This also contributes to small states' tendency to avoid any ambiguous disputes (Keoni, 2021, 31 August) (Muller, 2021, 25 August) (Simon, 2021, 17 September). This is especially the case for small states that are in locations highly integrated in terms of regional trade e.g. Africa and the Asia-Pacific (Tesfaye, 2021, 31 August). Perhaps more importantly, it makes disputes more time consuming and therefore costly to litigate (Nottage, 2009, p. 3).

Further, engaging in PTA, RTA and bilateral forums usually includes smaller groups of states, which of course means fewer veto players and makes it easier to resolve issues without escalation (Johns & Pelc, 2014, p. 664) (Tesfaye, 2021, 31 August). Additionally, in such forums, especially bilateral forums, the resolution of disputes tends to set less of a precedent than the DSM does (Muller, 2021, 25 August). This means that there is likely to be less interest in cases that involve systemic issues from outside parties, lowering the number of parties to disputes as well (Muller, 2021, 25 August). Such forums also tend to involve regular meetings of all participants as well as platforms to increase accessibility and communication of members such as online platforms (Tesfaye, 2021, 31 August). They are also often much less formal, further lowering the barriers to involvement (Aziz, 2021, 1 September).

All of these factors make engaging in such forums less costly and less risky for small states, which can lead to a preference for small states to engage in PTA, RTA and bilateral forums over DSM where possible (Aziz, 2021, 1 September) (Tesfaye, 2021, 31 August). This is especially the case for those small states who are unable to build a basic capacity (Tesfaye, 2021, 31 August). While there could be an argument that this point does not belong in research around success in the WTO, it is important to include how other forums have lower barriers and better chances of success in order to understand how we can improve chances of success in the WTO. Further, this preference directly impacts small states' ability to effectively litigate in the DSM as it means that even when a measure or trade issue falls under the scope of the WTO, they may first attempt to solve the issue in such forums. In the short term, this may be more beneficial for the state. However, in the long term, it contributes to low legal capacity by preventing the state from gaining greater experience in the DSM, even when it is use warranted. As a result, to mitigate the reduced experience as a result of this preference, small states who do have a preference for alternative trade forums should particularly be concerned with gaining experience in the DSM through other means.

Political Constraints

There are also political constraints, both in initiating disputes and in their success. Political constraints are not unique to small states, but due to their lessened position of power, especially soft power, as well as their small trade flows, reliance on the international system, and smaller economic capacities, they are going to be more affected by any political constraints compared to middle and large states.

One of the biggest concerns for small developing states is that developing states are traditionally the beneficiaries of preferential treatment from developed countries, especially large, developed countries (Bown & Hoekman, 2005, p. 863) (Martin, 2021, 21 September) (Nottage, 2009) (Pauwelyn, 2000, p. 338). This may come in the form of development aid or preferential market access (Aziz, 2021, 1 September) (Bown & Hoekman, 2005, p. 863) (Martin, 2021, 21 September) (Pauwelyn, 2000) (Rodríguez, 2021, 31 August). As such, states fear that this development aid or market access will be reduced or removed if they initiate a case against a larger state who provides such benefits, especially if they bring the

dispute to the panel stage (Abbott, 2007, p. 14) (Aziz, 2021, 1 September) (Bown & Hoekman, 2005, p. 863) (López, 2021, 26 July) (Martin, 2021, 21 September) (Nottage, 2009). There are also concerns around retaliation in regular trade such as the introduction of countermeasures (Aziz, 2021, 1 September) (López, 2021, 26 July) (Rodríguez, 2021, 31 August).

Further, many states have concerns about harming long-term bilateral relationships with large and important trading partners by initiating disputes against them, which is almost all of the disputes that small states initiate (Aziz, 2021, 1 September) (Guzman & Simmons, 2005, p. 564) (López, 2021, 26 July) (Muller, 2021, 25 August) (Tesfaye, 2021, 31 August). This is more applicable for developed small states as well as small developing states. That is, states might not see any immediate repercussions for a dispute like loss of development aid or countermeasures, but there might be a reluctance to engage in greater integration a few years down the track or reduced market access for example, not just in economic areas though this is typically the most important for small states (Aziz, 2021, 1 September) (López, 2021, 26 July) (Muller, 2021, 25 August) (Tesfaye, 2021, 31 August). As a result of these political pressures, or perceived political pressures, many small states might be more willing to accept a solution with less favourable terms than they would strive for if these pressures weren't in place or perceived to be in place (López, 2021, 26 July).

Some experts argue that the reason for these fears is a lack of familiarity with the system, which is characteristic of small and developing states, which results in a perception that the DSM is more like other areas of international law, that is political (Martin, 2021, 21 September). This could be why there is typically more of a perception in large states that the WTO is essentially technical rather than political, as these states are the biggest users of the DSM (López, 2021, 26 July). The ACWL promotes training and involvement in the system for LDCs and developing states to show them that such retaliation is rarely actualised (Martin, 2021, 21 September). According to some experts, political aspects to disputes are less common than in the past (Rodríguez, 2021, 31 August). As to whether this is the case, or if the fear of retaliation outside of the WTO is justified, there is much debate, both within the literature and between industry experts (Abbott, 2007, p. 14) (Aziz, 2021, 1 September) (Martin, 2021, 21 September) (Tesfaye, 2021, 31 August) (Muller, 2021, 25 August) (Nottage, 2009, p. 11). However, the fact remains that the fear is present and impacts how

states, especially small and developing states, utilise the DSM, which impacts their success (Nottage, 2009, p. 11).

These conclusions are also supported in the literature around dispute initiation, though primarily through the lens of developing states and LDCs. That is, because such states primarily pursue cases against states much more powerful, both politically and economically, than themselves (Tania, 2013, p. 383). This is particularly important for those LDCs that rely on development aid, which is most of them (Bown, 2005, p. 291) (Tania, 2013, p. 383). The fear of reprisal outside of the WTO by holding their aid hostage is too high a cost for most LDCs (Tania, 2013, p. 383). As such, many argue that those in a weakened position of power may avoid using the WTO dispute settlement mechanism for fear of retaliation and high political cost (Guzman & Simmons, 2005, pp. 564-565) (Sattler & Bernauer, 2011, p. 144).

Addressing Political Constraints

In order to address the political concern for retaliation of small states in engaging in the DSM at the system level, WTO reforms such as introducing consequences for retaliation are needed. At the individual level, increased experience is needed to evoke perception change.

WTO Reform: Consequences for Retaliation

The introduction of consequences for states who retaliate outside of the WTO should be introduced as deterrence for retaliating and to provide reassurance to small and developing states who fear such retaliation. Consequences could include collective or membership sanctions, or fines (see Addressing Retaliatory Capacity for further discussion). While this would be hugely beneficial in providing security for small states who are nervous about participating or requesting the establishment of a panel as a result of political fears, it is unlikely to go ahead, as this would require a significant mandate. This is as, it would give the WTO some control over what states do outside of the trade arena and therefore give up a greater slice of sovereignty than states already have, which would likely not be received well.

Small State Organisation

In addition to the benefits for addressing legal and economic capacity and the Coalition Effect (see Addressing Legal Capacity, Addressing Economic Capacity, and Utilising the Coalition Effect for further discussion), the creation of an ACWL-style small state organisation could also be useful in terms of providing security against economic or political reprisal. This is as, such an organisation could create a pool of funds for countries that, for example, have development aid pulled, as a result of initiating a dispute or requesting the establishment of a panel. This would allow for small states, particularly developing small states, to use the dispute settlement mechanism more often when needed without such high fear of repercussions outside of trade. Especially considering many experts believe that this is not a common occurrence, so such funds likely won't be utilised often (López, 2021, 26 July) (Martin, 2021, 21 September). This would allow small states with higher economic capacities to aid those with lower economic capacities, while still having lower individual burdens due to cost-sharing. In this point, the more small states that become members the better able the organisation would be able to provide support in the event of economic reprisal.

Individual Action: Perception Change

Fear of political reprisal is significant for many small states in utilising the DSM, however, it has been suggested that greater ongoing engagement with and understanding of the system may be useful in changing this (López, 2021, 26 July) (Martin, 2021, 21 September). We have seen in South America that the reluctance to utilise the dispute settlement mechanism has decreased in recent decades and consistent and regular use of the DSM has replaced countermeasures as the main way to settle trade disputes (López, 2021, 26 July). This is not the case in other regions such as Africa, it seems that one of the factors in this is the mindset shift towards using the DSM to solve trade disputes as ‘business as usual’ rather than a declaration of economic war, particularly important trade partners (López, 2021, 26 July). As such, many encourage normalising the use of the DSM so that bringing a dispute to the WTO is not seen as an escalation of an issue by greater engagement with the system (López, 2021, 26 July) (Martin, 2021, 21 September). Therefore, building capacity through increased experience (see Addressing Legal Capacity for further discussion) may also help to quell some of these political fears.

Internal Infrastructure and Co-ordination

The last significant factor that can impact success in the DSM is the internal infrastructure and coordination of the small state (Aziz, 2021, 1 September) (Martin, 2021, 21 September) (Nottage, 2009) (Simon, 2021, 17 September). It is important to note that developing countries and LDCs are the most impacted by this, though small states may still have less robust internal infrastructure and coordination than larger and middle states in terms of the systems they have in place due to cost and lack of expertise and innovation (Martin, 2021, 21 September) (Nottage, 2009). Further, smaller states have smaller private sectors (Bailes et al., 2016, pp. 13-14).

The primary reason that internal infrastructure and coordination are important in the DSM is that the better the internal infrastructure is and the more coordinated it is, the better able states are to identify measures that may be inconsistent with WTO obligations (Martin, 2021, 21 September) (Nottage, 2009). Further, in order to successfully complete all stages of the dispute settlement process, including pre-and post-litigation stages, there must be effective communication within the government and between the government and the private sector (Martin, 2021, 21 September).

Firstly, effective communication within the government is essential to favourable outcomes (Martin, 2021, 21 September). This means communication between different departments in government, for example between the trade department the agriculture department in a dispute affecting the export of agricultural products (Martin, 2021, 21 September). Without such communication is will be difficult for the trade department to advocate for the agriculture department in a dispute proceeding, and difficult for the agriculture department to convey concerns regarding measures that are impacting the agricultural sector, that may have been communicated to them by the private sector.

Secondly, without effective communication between the government and the private sector, it is very difficult for the private sector to alert the government to any issues arising due to trade measures, which can make the identification of measures difficult and often very slow (López, 2021, 26 July) (Martin, 2021, 21 September) (Nottage, 2009). Without such communication, governments must work much harder to be aware of the barriers that are faced by industry, which of course is very time and labour intensive when you take into

account how many industries and how many trade partners even a small state has (Martin, 2021, 21 September). As a result of this, having effective communication between the private sector and the government is even more important for small states who lack the capacity to effectively keep track of this. Further, the private sector needs to be able to clearly communicate how they are being affected by trade measures for the government to be able to prepare a successful case for the DSM (Martin, 2021, 21 September). Strong ties to the private sector might also facilitate private funding of disputes, which can help small states overcome their economic capacity constraints (Muller, 2021, 25 August) (Simon, 2021, 17 September).

This coordination and infrastructure may look like good relationships between departments, platforms that allow effective communication, regular meetings between departments and with the private sector, clear rules and hierarchies regarding the relationships between departments and the private sector (Martin, 2021, 21 September). For example, the EU does this extremely effectively, they have set out channels of communication between states and the Trade Policy Committee, with regular meetings and opportunities for states to make the committee aware of any potentially inconsistent measures with the WTO and dispute settlement being a standing item on the agenda (Shaffer, 2007, p. 171) (Olsen, 2021, 17 September) (Weber, 2021, 30 August). Further, they have a platform, Trade Barrier Investigations, which allows the private sector, although states can utilise it as well, to alert them to any trade issues that may come under the WTO (European Commission, 2020) (Shaffer, 2007, p. 175) (Olsen, 2021, 17 September). This not only alerts them to these issues, but those filing complaints are required to provide many details such as data on trade flows, and evidence of the trade measure (European Commission, 2020) (Shaffer, 2007, p. 177). This means that the private sector is also taking on some of the preliminary research that is necessary before deciding on engaging in a dispute and also helping the EU to meet their burden of proof (Muller, 2021, 25 August). The United States similarly has mechanisms set up for the private sector to identify potentially inconsistent trade measures and communicate this with the government (Shaffer, 2007, pp. 152-158). Their legal capacity and economic resources make this much easier for them to accomplish than small states, especially in creating systems that run smoothly and automatically (López, 2021, 26 July). This mixing of public and private spheres is increasingly common, especially in large

states, and could particularly be significant for small states due to capacity constraints (Shaffer, 2007, pp. 148-150).

The constraints present with the lack of internal infrastructure is also supported by the literature around dispute initiation, though focusing primarily on developing countries and LDCs. Especially concerning the lack of a large private sector in many LDCs as well as little or no cooperation between the private and public sectors (Tania, 2013, p. 382).

Addressing Internal Infrastructure and Coordination

The primary way in which small states can address their internal infrastructure and coordination to increase successful participation in the DSM is by expanding and improving their engagement and communication with the private sector within their own states (Martin, 2021, 21 September). One primary recommendation of how to do this would be to create a similar system as the EU's Trade Barrier Regulation complaints system which has an online platform and specific process for registering complaints (European Commission, 2020). This would lower the barrier to engagement for small states, allowing them to focus some of their limited legal capacity more towards the actual litigation rather than the preliminary work. This is as it would lessen the burden on small states' need to identify inconsistent measures and much of the preliminary research and data needed, as some of this work will be completed by the private sector. Further, the private sector is more easily able to identify such measures, as it is them that is being most directly affected giving them a strong incentive to utilise such a system. As such, any small states that do not have such a system should invest in creating one. Further, increasing communication and engagement with the private sector may also lead to greater funding by the private sector of disputes that would otherwise be too costly for small states to engage in or perhaps would be less able to provide the best possible case due to lack of resources (Hsieh, 2010, p. 1015) (Muller, 2021, 25 August) (Simon, 2021, 17 September).

In addition, other states, particularly in China, have seen success in establishing or utilising existing, think tanks to expand local WTO knowledge (Hsieh, 2010, pp. 1013-1015). In China, these were government agencies rather than part of the private sector or NGOs, though in some states establishing such think tanks as NGOs may be more useful (Hsieh, 2010, p.

1013). The thinks tanks are designed to educate the private sector on the WTO, especially for companies and their employees that have little to no exposure or experience with the WTO (Hsieh, 2010, p. 1013). In China, the emphasis was on giving these employees and companies the tools and knowledge to make sure they are meeting WTO obligations (Hsieh, 2010, pp. 1013-1014). While this is still important and valuable in small states, the main focus should be on educating them on their rights under the WTO, so that they can identify when these obligations are not being met and then bring these grievances to the government. Further, such think tanks can educate businesses on how to then reach out to the government and communicate these issues to them effectively and could even play an active role in being the bridge between local businesses and central government (Hsieh, 2010, pp. 1013-1014). These can be especially useful for small states who don't have trade associations or have weak trade associations (Hsieh, 2010, p. 1014). These two recommendations would also work to reinforce one another, if there is a greater way for the private sector to engage the government on trade issues that fall under the scope of the WTO, this is not useful if the private sector doesn’t have the necessary knowledge and expertise to identify such issues.

Chapter Seven: Conclusion

The World Trade Organisation (WTO) is vitally important to the health and wellbeing of the international system that small states are so reliant on, and its dispute settlement mechanism (DSM) is its so-called 'crown jewel'. As such, a greater understanding of how states can and do utilise the mechanism is extremely important. Further, the fact that this mechanism is one of the only ways in the world that small states have the right to bring large states to court, and often win, shows the enormous achievements that have been made towards greater equality in the world trade system and a commitment toward trade liberalisation. Despite this, there is currently little to no research which tries to understand the barriers that small states face in the DSM and how they can overcome these barriers in order to challenge large states more successfully. This is significant not just for their economic prosperity, but also in allowing them to set precedents in the WTO and build their reputation. As such, this thesis set out to answer the question of what the most significant factors are for small states success in WTO disputes against large powers.

In order to answer this question, a series of experts were interviewed. This included those involved in the DSM through the states themselves, especially through the delegations of small states to the WTO in Geneva. As well as other experts such as an international trade lawyer and ACWL staff member. This research concludes that there are a huge variety of factors that impact how successfully small states can utilise the DSM. Most significant are the legal and economic capacity constraints faced by small states. The low legal capacity that small states tend to have is caused by human capital and economic constraints and results in small in-house legal teams, and a lack of specialisation, expertise and experience coupled with high costs of building capacity. These all massively limit small states' ability to navigate the DSM successfully. As a result, small states for whom legal capacity is an issue of primary concern should advocate for reform of the WTO, particularly regarding the introduction of a more inclusive category for small states, as well as notification reform and instituting explicit rulings. They should also create a small state organisation aimed at addressing these legal capacity constraints. Further, for states who wish to increase the legal capacity of their own states without incurring huge costs, they should increase their experience in the DSM through third party participation and taking part in training

programmes where possible. They should also increase specialisation where economically feasible and utilise domestic counsel.

The lower economic capacity for small states is caused primarily by small markets making it difficult for small states to litigate in the WTO due to the high costs. This means that small states are forced to make a 'make or buy' decision, as to whether they're going to build a high enough legal capacity to litigate themselves or if they will pay the high fees of external counsel. For small states where economic capacity is of primary concern, the focus should be on reforming the WTO through the establishment of a small claims procedure and the introduction of legal aid, as well as encouraging the greater use of online platforms. For these states, a small state organisation will also be an excellent way to increase cost-sharing to spread the economic burden of dispute settlement. Further, small states with extremely low economic capacity should focus primarily on building and maintaining a basic legal capacity and utilise external counsel for everything else, whereas small states will higher economic capacity can focus on building and maintaining a more experienced and specialised legal capacity and using external counsel to fill in their gaps.

While the ACWL eases some of the constraints on developing states by providing subsidised external counsel, many small states cannot access their services and small developing states are treated as equal to developing middle and large states despite their compounded constraints. As such, for developed small states whose legal and economic capacities are of greatest concern, reform of the ACWL should be a focus in order to allow developed small states access to these subsidised services. Further, small developing small states should advocate for greater levels of subsidisation due to compounded constraints.

The primary, and perhaps only, factor that advantages small states in the DSM is the use of the Coalition Effect. Small states disproportionately benefit from the creation of 'joint', 'independent' and 'third-party' coalitions in disputes. This is as, they benefit from cost-sharing, collaboration, and increased legal and political weight, which all have a greater impact on the outcomes for small states compared with middle and large states. As such, small states who wish to utilise the Coalition Effect should engage with the creation of a small state organisation as an excellent forum for building coalitions. They should further focus on fostering relationships, both with other small states and with middle and large states to pave the way for future coalitions.

Additionally, the Appellate Body (AB) crisis caused by the US blocking the appointment of new AB members means that there is essentially no binding appeals system so that instead of concluding disputes, they can be 'appealed into the void'. This means that small states are left on the hook for large litigation bills, meanwhile, their industries are being decimated by the measures in dispute. As such, small states for whom the AB crisis poses a significant concern should focus on advocating for both the short-term and long-term reforms of the AB that are needed to end the crisis and to prevent it from happening again. In the meantime, they should engage with the Multi-Party Interim Appeal Arbitration Arrangement (MPIA) in order to have a mechanism through which appeals can take place, even if it is not ideal. They should further conclude bi-lateral agreements to prevent appeals when entering new disputes where possible.

Small states are also disadvantaged by their lack of retaliatory capacity compared to middle and large states due to their smaller political and economic weight meaning that retaliation, or the threat of retaliation, is not an effective deterrence against non-compliance of larger states. In order to address this, especially for states where retaliatory capacity is a particular concern, they should advocate for reforms of the WTO, particularly for the introduction of collective sanctions (or membership sanctions as a less desirable alternative) and monetary compensation in place of current sanctions.

Further, many small states, especially developing small states, also seem to prefer using bilateral and RTA, and PTA forums compared with the DSM due to lower barriers for participation, especially economic barriers. This reduces the already low frequency of small states participation in the DSM even when their participation would be justified, reducing their ability to build capacity in the system. As such, small states who have a preference for other trade forums should especially focus on gaining experience in the DSM through other means to make up for this preference.

Political constraints are also a factor in success for small states as they face greater fears of political and economic retaliation compared to middle and large states due to power disparities, lower trade flows, and greater reliance on the international system. This means that small states either will be less likely to engage in the DSM or will be more likely to accept less favourable settlements to avoid repercussions. For small states for whom retaliation is of particular concern, the focus for WTO reform should be on the institution of

consequences for retaliation. They should also look to the creation of a small state organisation, which may be able to provide support in the case of retaliation from larger states. Lastly, small states can also increase familiarity and experience in the DSM to help alleviate such fears.

Lastly, small states, particularly small developing states, face more issues with their internal infrastructure due to low economic capacity, high cost of infrastructure, and lack of expertise. This means that the ability to coordinate between government and industry, and between government agencies is reduced which can impact their ability to navigate the DSM successfully. In order to address this, small states who have issues with their internal structure should consider creating paths and platforms for better communication between the government and the private sector, as well as between government departments. They can also create or encourage think tanks to educate the private sector on the WTO and to act as a bridge between the private sector and the government increasing coordination.

Significance of Research

Largely, the results of this research confirm the importance of factors identified in the literature as significant for developing states in areas such as dispute initiation and liberalisation for small states. Particularly legal, economic, and retaliatory capacity, and political constraints. However, it links these factors to small states, in that these constraints are also faced by small states, and some aspects, such as the impact of low human capital in legal capacity, are even more strongly faced by small states than developing states or LDCS. As a result, it shows the compounded constraints faced by small developing states, which also has not been emphasised or thoroughly documented in the literature.

Further, this thesis introduces the idea of the Coalition Effect into the literature. Partially in regard to its importance for allowing small states to form coalitions to ease many of their capacity constraints to be more successful in the DSM. This has even greater implications than for just the DSM by introducing the concept of temporary shelter giving small states a way to gain shelter in the international system in a more flexible way. As such, it may be a more beneficial strategy for some small states, especially those with more independent foreign policies, than current ideas around Shelter Theory. As such, this research is a first

step in filling the gap in the dispute settlement literature around small states and begins to give recommendations to allow small states to be more successful.

Perhaps most importantly, it contributes to both the dispute settlement and small state literature with a more thorough and holistic definition of small statehood. This allows for the study of small states without excluding a huge proportion of states that don't fit stringent population or GDP criteria but still face constraints based on their size. As such, this research creates a starting point for anyone wanting to study small states in any area of political science through this definition.

Avenues for Further Research

There are many areas here that would benefit from further research, both in expanding on the findings of this research and by expanding on areas touched by this research.

Expanding Findings

Firstly, while the use of experts interviews to answer the research question was most useful in this thesis and as a starting point for examining small states' engagement in the DSM, there are inherent limitations in using interviews as the main source of data for research. As such, in order to confirm and expand on the findings of this research empirical study of the factors discussed would also be useful. One area in particular that needs greater understanding is in how small states make decisions about engagement in the DSM to examine how truly representative the current statistics are of small state success. Such as, answering the question of how common it is for small states to choose not to engage with the DSM due to the factors discussed in this thesis, or how common is it for small states to choose to settlement with suboptimal results rather than continue with a dispute that is both economically and politically costly. This research indicates that this may be a relatively common occurrence that has a significant impact on small state participation, but a more narrowly focused study with a larger sample size would be beneficial to truly understand the impact of this for small states.

Further, more research is needed into how the factors identified in this research affect microstates differently compared to larger small states. This is as this differentiation, though important in the study of small states, did not come under the scope of this research. This is

especially important because it is likely that microstates face even more stringent constraints.

This research identified a possible issue in that small states might be more likely to settle disputes with suboptimal outcomes due to economic and political considerations. As such, deeper research into this would be beneficial, in verifying this with a dedicated study, and if verified, researching how much of small states' wishes are compromised as a result.

Expanding Research

Firstly, a re-examination of much of the empirical data that has been used to examine the impact of these factors on small and/or developing states would hugely benefit from a more thorough and holistic view of small statehood used in the case selection. Most of the current research which would benefit from such a re-examination focused on the capacity constraints which limit the usefulness of the DSM such as legal, economic and retaliatory capacity. This would help to give a greater understanding of how these capacity constraints impact small states, without excluding the large proportion of states that are excluded in the current empirical research on the topic.

Further, a more thorough, and preferably empirical, examination of the repercussions, or lack thereof, of initiating a dispute and/or establishing a panel against a larger state is desperately needed. This is as, the fear of economic or political retaliation, especially with important trade partners and/or aid contributors, is an important factor for many small states despite the lack of conclusions about its true impact. As such, more research is needed to determine if this is fear is founded so small states can make more informed decisions around initiation of disputes and/or establishing panels against larger states.

Final Thoughts

There are huge barriers to small state success in the dispute settlement mechanism and change is needed in order for the WTO to truly give equal access and precedence to all states rather than playing to the strengths of already strong large states. However, such change is likely to be so slow and difficult that small state policymakers need to make changes within their own states and with their diplomatic relationships first in order to ensure greater success in the DSM until such a time that the WTO is truly a bastion for equality in trade and greater trade liberalisation. But all hope is not lost, there are still a

huge variety of policies that small states can follow to ensure greater success and more economic prosperity for their people and especially when small states join together in this goal because, for small states at least, there truly is strength in numbers.

Bibliography

Abbott, R. (2007). Are Developing Countries Deterred from Using the WTO Dispute Settlement System?: Participation of Developing Countries in the DSM in the years 1995-2005. *ECIPE Working Paper, No. 01/2007*.

Advisory Centre on WTO Law. The ACWL's Mission. Retrieved from https://www.acwl.ch/acwl-mission/

Advisory Centre on WTO Law. Legal Advice. Retrieved from https://www.acwl.ch/legal-advice/

Advisory Centre on WTO Law. Members. Retrieved from https://www.acwl.ch/members-introduction/

Advisory Centre on WTO Law. Training. Retrieved from https://www.acwl.ch/training-introduction/

Advisory Centre on WTO Law. (2004). *Billing Policy and Revised Time Budget* Decision 2004/3.

Advisory Centre on WTO Law. (2007). *Revised Rules for Support in WTO Dispute Settlement Proceedings through External Legal Counsel* Decision 2007/8.

Albashar, F. A. S. A., & Maniruzzaman, A. F. M. (2010). Reforming the WTO Dispute Settlement System: A Rethink of the Third Party Right of Access to Panel and Appeal Processes from Developing Countries' Perspectives. *The Journal of World Investment and Trade, 11*(3), 311-373.

Anderson, J. E., & Wincoop, E. V. (2003). Gravity with Gravitas: A Solution to the Border Puzzle. *The American Economic Review, 93*(1), 170-192.

Antoniadis, A. (2002). Enhanced Third Party Rights in the WTO Dispute Settlement Understanding. *Legal Issues of Economic Integration, 29*(3), 285-304.

Appellate Body Report. United States – Measures Affecting the Cross-Border Supply of Gambling and Betting Services In *WT/DS285/AB/R* (Adopted Apr. 20, 2005).

Aziz, A. (2021, 1 September) *Personal Communication*.

Bacchus, J., & Lester, S. (2019). Trade Justice Delayed Is Trade Justice Denied: How to Make WTO Dispute Settlement Faster and More Effective. *Free Trade Bulletin, 75*. Retrieved from https://www.cato.org/free-trade-bulletin/trade-justice-delayed-trade-justice-denied-how-make-wto-dispute-settlement

Bagwell, K., & Staiger, R. W. (2002). *The economics of the world trading system*. Cambridge, Massachusetts: MIT Press.

Bailes, A. J. K., Thayer, B. A., & Thorhallsson, B. (2016). Alliance theory and alliance 'Shelter': the complexities of small state alliance behaviour. *Third World Thematics: A TWQ Journal, 1*(1), 9-26. doi:https://doi.org/10.1080/23802014.2016.1189806

Bailes, A. J. K., & Thorhallsson, B. (2013). Instrumentalizing the European Union in Small State Strategies. *European Integration, 35*(2), 99-115. doi:http://dx.doi.org/10.1080/07036337.2012.689828

Bailes, A. J. K., & Thorhallsson, B. (2017). Do Small States Need 'Alliance Shelter'? Scotland and the Nordic Nations. In A. W. Neal (Ed.), *Security in a Small Nation: Scotland, Democracy, Politics* (pp. 49-75): Open Book Publishers.

Barston, R. P. (1973). *The Other Powers: Studies in the Foreign Policies of Small States.* London: George Allen and Unwin.

Bekker, P. H. F. (1993). International Legal Aid in Practice: The ICJ Trust Fund. *The American Journal of International Law, 87*(4), 659-668.

Bogdandy, A. v. (1992). The Non-Violation Procedure of Article XXIII: 2 GATT -- Its Operational Rationale. *Journal of World Trade, 26*(4), 95-111.

Bown, C. P. (2004a). Developing Countries as Plaintiffs and Defendants in GATT/WTO Trade Disputes. *The World Economy, 27*(1), 59-80.

Bown, C. P. (2004b). On the Economic Success of GATT/WTO Dispute Settlement. *The Review of Economics and Statistics, 86*(3), 811-823.

Bown, C. P. (2005). Participation in WTO Dispute Settlement: Complainants, Interested Parties, and Free Riders. *The World Bank Economic Review, 19*(2), 287-310.
Bown, C. P., & Hoekman, B. M. (2005). WTO Dispute Settlement and the Missing Developing Country Cases: Engaging the Private Sector. *Journal of International Economic Law, 8*(4), 861-890. doi:10.1093/jiel/jgi049
Busch, M. L. (2000). Democracy, Consultation, and the Paneling of Disputes under GATT. *The Journal of Conflict Resolution, 44*(4), 425-446.
Busch, M. L., & Pelc, K. J. (2009). Does The WTO Need a Permanent Body of Panelists? *Journal of International Economic Law, 12*(3), 578-594. doi:10.1093/jiel/jgp024
Busch, M. L., & Pelc, K. J. (2010). The Politics of Judicial Economy at the World Trade Organization. *International Organization, 64*(2), 257-279.
Busch, M. L., & Reinhardt, E. (2002). Testing international trade law: Empirical studies of GATT/WTO dispute settlement. In D. L. M. Kennedy & J. D. Southwick (Eds.), *The Political Economy of International Trade Law: Essays in Honor of Robert E. Hudec*. Cambridge: Cambridge University Press.
Busch, M. L., & Reinhardt, E. (2006). Three's a Crowd: Third Parties and WTO Dispute Settlement. *World Politics, 58*(3), 446-477.
Busch, M. L., Reinhardt, E., & Shaffer, G. (2009). Does legal capacity matter?: A survey of WTO Members. *World Trade Review, 8*(4), 559-577. doi:1O.1017/S1474745609990085
Bütler, M., & Hauser, H. (2000). The WTO Dispute Settlement System: A First Assessment from an Economic Perspective. *Journal of Law, Economics, & Organization, 16*(2), 503-533.
Carr, A. (2014). Is Australia a middle power? A systemic impact approach. *Australian Journal of International Affairs, 68*(1), 70-84. doi:10.1080/10357718.2013.840264
Charnovitz, S. (2001). Rethinking WTO Trade Sanctions. *The American Journal of International Law, 95*(4), 792-832.
Cooper, D. A. (2011). Challenging Contemporary Notions of Middle Power Influence: Implications of the Proliferation Security Initiative for 'Middle Power Theory'. *Foreign Policy Analysis, 7*(3), 317-336. doi:10.1111/J.1743-8594.2011.00140.X
Cottier, T. (2021). Recalibrating the WTO Dispute Settlement System: Towards New Standards of Appellate Review. *Journal of International Economic Law, 24*, 515-533. doi:https://doi.org/10.1093/jiel/jgab024
Cottier, T., & Elsig, M. (2011). *Governing the World Trade Organization: Past, Present and Beyond Doha*. Cambridge: Cambridge University Press.
Davey, W. J. (2003). The Case for a WTO Permanent Panel Body. *Journal of International Economic Law, 6*(1), 177-186.
DSU. (1994). Understanding on Rules and Procedures Governing the Settlement of Disputes In: Marrakesh Agreement Establishing the World Trade Organization.
EU Regulation 2021/167. (2021). Amending Regulation (EU) No 654/2014 concerning the exercise of the Union's rights for the application and enforcement of international trade rules. In. The European Parliament & The Council of the European Union: https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv%3AOJ.L_.2021.049.01.0001.01.ENG&toc=OJ%3AL%3A2021%3A049%3ATOC.
EUR-Lex. (2021). Brexit: EU-UK relationship. Retrieved from https://eur-lex.europa.eu/content/news/Brexit-UK-withdrawal-from-the-eu.html
European Commission. EU and WTO. Retrieved from https://ec.europa.eu/trade/policy/eu-and-wto/
European Commission. (2020). *Trade Barriers Regulation - Filing a complaint*.
Fasih, T. (2008). *Linking Education Policy to Labor Market Outcomes*: World Bank Publications.
Fearon, J. D. (1997). Signaling Foreign Policy Interests: Tying Hands versus Sinking Costs. *The Journal of Conflict Resolution, 41*(1), 68-90.

Fiorini, M., Hoekman, B., Mavroidis, P., Saluste, M., & Wolfe, R. (2019). WTO Dispute Settlement and the Appellate Body Crisis: Insider Perceptions and Members' Revealed Preferences. *Journal of World Trade, 54*(5), 667-698.

Fox, A. B. (2006). The Power of Small States: Diplomacy in World War II. In J. Beyer, S. Gstöhl, C. Ingebritsen, & I. Neumann (Eds.), *Small States in International Relations*. Washington: University of Washington Press.

Gao, H. (2021). Finding a Rule-Based Solution to the Appellate Body Crisis: Looking Beyond the Multiparty Interim Appeal Arbitration Arrangement. *Journal of International Economic Law, 24*(3), 534-550. doi:https://doi.org/10.1093/jiel/jgab031

Guzman, A. T., & Simmons, B. A. (2005). Power Plays and Capacity Constraints: The Selection of Defendants in World Trade Organization Disputes. *The Journal of Legal Studies, 34*(2), 557-598.

Handel, M. (2006). Weak States in the International System. In J. Beyer, S. Gstöhl, C. Ingebritsen, & I. Neumann (Eds.), *Small States in International Relations*. Washington: University of Washington Press.

Hansen, A. (2021, 1 September) *Personal Communication*.

Hart, N. M., & Murrill, B. J. (2021). The World Trade Organization's (WTO's) Appellate Body: Key Disputes and Controversies. *Congressional Research Service*. Retrieved from https://crsreports.congress.gov/product/pdf/R/R46852

Hoekman, B. M., & Mavroidis, P. C. (2020). To AB or Not to AB? Dispute Settlement in WTO Reform. *Journal of International Economic Law, 23*(3), 703-722. doi:10.1093/jiel/jgaa020

Hoekman, B. M., & Mavroidis, P. C. (2021a). Preventing the Bad from Getting Worse: The End of the World (Trade Organization) As We Know It? *European Journal of International Law*, 1-28. doi:10.1093/EJIL/CHAB052

Hoekman, B. M., & Mavroidis, P. C. (2021b). WTO Reform: Back to the Past to Build for the Future. *Global Policy, 12*(3), 5-12.

Hoekman, B. M., & Wolfe, R. (2020). *Informing WTO Reform: Practitioner Perspectives from China, the EU, and the U.S.* Retrieved from https://globalgovernanceprogramme.eui.eu/wp-content/uploads/2021/03/China-US-EU-WTO-reform-practitioner-perspectives_2021-1.pdf

Holmes, P., Rollo, J., & Young, A. R. (2003). Emerging Trends in WTO Dispute Settlement: Back to the GATT? *The World Bank Development Research Group, (Policy Research Working Paper 3133)*.

Hopewell, K. (2021). When the hegemon goes rogue: leadership amid the US assault on the liberal trading order. *International Affairs, 97*(4), 1025-1043. doi:10.1093/IA/IIAB073

Horn, H., Mavroidis, P. C., & Nordström, H. (1999). Is The Use Of The WTO Dispute Settlement System Biased? *Centre for Economic Policy Research, (Discussion Paper Series 2340)*.

Howse, R. (2021). Appointment with Destiny: Selecting WTO Judges in the Future. *Global Policy, 12*(3), 71-81.

Hsieh, P. L. (2010). China's Development of International Economic Law and WTO Legal Capacity Building. *Journal of International Economic Law, 13*(4), 997-1036. doi:10.1093/jiel/jgq047

Hudec, R. E. (1993). *Enforcing international trade law: the evolution of the modern GATT legal system*. Salem, NH: Butterworth Legal Publishers.

Hudec, R. E. (2002). The Adequacy of WTO Dispute Settlement Remedies: A Developing Country Perspective. In B. Hoekman, A. Mattoo, & P. English (Eds.), *Development, Trade, and the WTO*. Washington D.C.: The World Bank.

Johns, L., & Pelc, K. J. (2014). Who Gets to Be In the Room? Manipulating Participation in WTO Disputes. *International Organization, 68*(3), 663-699.

Jones, C. (2009). Hegemony. In I. McLean & A. McMillian (Eds.), *The Concise Oxford Dictionary of Politics*.

Katzenstein, P. J. (2006). Small States in World Markets: Industrial Policy in Europe. In J. Beyer, S. Gstöhl, C. Ingebritsen, & I. Neumann (Eds.), *Small States in International Relations* (pp. 193-217): University of Washington Press.

Keohane, R. O. (2006). Lilliputians' Dilemmas: Small States in International Politics. In J. Beyer, S. Gstöhl, C. Ingebritsen, & I. Neumann (Eds.), *Small States in International Relations*. Washington: University of Washington Press.
Keoni, K. (2021, 31 August) *Personal Communication*.
Kohona, P. T. B. (1994). Dispute Resolution under the World Trade Organisation—An Overview. *Journal of World Trade, 28*(2), 23-47.
Kuenzel, D. J. (2017). WTO dispute determinants. *European Economic Review, 92*, 157-179.
Latif, M. I. (2007). The WTO Dispute Settlement System: Its Analysis and Implications for Pakistan. *Journal of Asian and African Studies, 42*(5), 447-459. doi:10.1177/0021909607081125
Lester, S. (2020). Can Interim Appeal Arbitration Preserve the WTO Dispute System? *Free Trade Bulletin, 77*. Retrieved from https://www.cato.org/free-trade-bulletin/can-interim-appeal-arbitration-preserve-wto-dispute-system
Liska, G. (1968). *Alliances and the Third World (Study in International Affairs)*. Baltimore: The John Hopkins University Press.
López, M. (2021, 26 July) *Personal Communication*.
Martin, E. (2021, 21 September) *Personal Communication*.
McCallum, J. (1995). National Borders Matter: Canada-U.S. Regional Trade Patterns. *The American Economic Review, 85* (615-623).
McDougall, R. (2018). The Crisis in WTO Dispute Settlement: Fixing Birth Defects to Restore Balance. *Journal of World Trade, 52*(6), 867-896.
Messenger, G. (2016). *The Development of World Trade Organization Law: Examining Change in International Law*. Oxford: Oxford University Press.
Miles, T. (2018). Antigua "losing all hope" of U.S. payout in gambling dispute. Retrieved from https://www.reuters.com/article/uk-usa-trade-antigua-idUSKBN1JI0VZ
Milman, O. (2021). Biden returns US to Paris climate accord hours after becoming president. *The Guardian*. Retrieved from https://www.theguardian.com/environment/2021/jan/20/paris-climate-accord-joe-biden-returns-us
Morgenthau, H. J. (1967). *Politics among nations: the struggle for power and peace*. New York: Knopf.
Muller, S. (2021, 25 August). Personal Communication.
New Zealand Statistics. (2021). New Zealand International Trade. Retrieved from https://statisticsnz.shinyapps.io/trade_dashboard/
Nordström, H., & Shaffer, G. (2008). Access to justice in the World Trade Organization: a case for a small claims procedure? *World Trade Review, 7*(4), 587-640. doi:10.1017/S1474745608003996
Nottage, H. (2009). Developing countries in the WTO Dispute Settlement System. *Global Economic Governance Working Paper, No. 2009/47*.
Nzelibe, J. O. (2005). The credibility imperative: the political dynamics of retaliation in the World Trade Organization's dispute resolution mechanism. *Theoretical Inquiries in Law, 6*(1), 7-254.
Olsen, W. (2021, 17 September). Personal Communication.
Osgood, R. E. (1968). *Alliances and American Foreign Policy*. Baltimore: John Hopkins Press.
Panel Report. European Communities - Trade Description of Scallops. In *WTO Doc. WT/DS12/R; WT/DS14/R*: (Adopted Aug. 5, 1996).
Panel Report. United States – Definitive Safeguard Measures on Imports of Certain Steel Products. In *WT/DS248/R; WT/DS249/R; WT/DS251/R; WT/DS252/R; WT/DS253/R; WT/DS254/R; WT/DS258/R; WT/DS259/R*: (Adopted July 11, 2003).
Panel Report. United States – Measures Affecting the Cross-Border Supply of Gambling and Betting Services In *WT/DS285/R*: (Adopted Apr. 20, 2005).
Park, A., & Jakstaite-Confortola, G. (2021). Small State Status-Seeking: Lithuania's Foreign Policy Status Aspirations. *Europe-Asia Studies, 73*(7), 1279-1302. doi:10.1080/09668136.2021.1919291

Pauwelyn, J. (2000). Enforcement and Countermeasures in the WTO: Rules are Rules-Toward a More Collective Approach. *The American Journal of International Law, 94*(2), 335-347.
Payosova, T., Hufbauer, G. C., & Schott, J. J. (2018). The Dispute Settlement Crisis in the World Trade Organization: Causes and Cures. *Peterson Institute for International Economics, 18*(5). Retrieved from https://www.piie.com/publications/policy-briefs/dispute-settlement-crisis-world-trade-organization-causes-and-cures
Pedersen, R. B. (2018). Bandwagon for Status: Changing Patterns in the Nordic States Status-seeking Strategies? *International Peacekeeping, 25*(2), 217-241. doi:10.1080/13533312.2017.1394792
Peet, R. (2009). *Unholy Trinity: The IMF, World Bank and WTO*. London: Zed Books.
Pelc, K. (2017). Third Party Participation at the WTO: What Have We Learned? In M. Elsig & J. Pauwelyn (Eds.), *Assessing the World Trade Organization: Fit for Purpose?* Cambridge: Cambridge University Press.
Reinhardt, E. (2000). Aggressive Multilateralism: The Determinants of GATT/WTO Dispute Initiation, 1948-1998. *Emory University, Atlanta, (Working Paper)*.
Reinhardt, E. (2001). Adjudication without Enforcement in GATT Disputes. *The Journal of Conflict Resolution, 45*(2), 174-195.
Reiter, D. (2006). Learning, Realism, and Alliances: The Weight of the Shadow of the Past. In J. Beyer, S. Gstöhl, C. Ingebritsen, & I. Neumann (Eds.), *Small States in International relations*. Washington: University of Washington Press.
Reitzig, A. (2006). In defiance of nuclear deterrence: anti-nuclear New Zealand after two decades. *Medicine, Conflict, and Survival, 22*(2), 132-144.
Request for Consultations by Ecuador, G., Honduras, Mexico, and the United States. European Communities — Regime for the Importation, Sale and Distribution of Bananas. In *WT/DS27/1*: (Feb. 12, 1996).
Request for Consultations by Guatemala, H., Mexico, and the United States. European Communities - Regime for the Importation, Sale and Distribution of Bananas. In *WT/DS16/1*: (Oct. 4, 1995).
Request for Consultations by Honduras, M., Guatemala, Panama and the United States. European Communities – Regime for the Importation, Sale and Distribution of Bananas. In *WT/DS158/1*: (Jan. 25, 1999).
Rodríguez, L. (2021, 31 August) *Personal Communication*.
Rothstein, R. L. (1968). *Alliances and Small Powers*. New York: Columbia University Press.
Sattler, T., & Bernauer, T. (2011). Gravitation or discrimination? Determinants of litigation in the World Trade Organisation. *European Journal of Political Research, 50*(143-167), 143-167. doi:10.1111/j.1475-6765.2010.01924.x
Schneider-Petsinger, M. (2020). Reforming the World Trade Organization: Prospects for transatlantic cooperation and the global trade system. *Chatham House Global Trade Policy Forum*. Retrieved from https://www.chathamhouse.org/2020/09/reforming-world-trade-organization/04-dispute-settlement-crisis
Schwartz, W. F., & Sykes, A. O. (2002). The Economic Structure of Renegotiation and Dispute Resolution in the World Trade Organization. *The Journal of Legal Studies, 31*, 179-204. Retrieved from https://www.jstor.org/stable/10.1086/340406
Schweller, R. L. (1994). Bandwagoning for Profit: Bringing the Revisionist State Back In. *International Security, 19*(1), 72-102.
Sekine, T. (2018). Enhanced Third Party Rights under the WTO Dispute Settlement System. *Manchester Journal of International Economic Law, 15*(3), 354-393.
Shaffer, G. (2007). 'Public-Private Partnerships' in WTO dispute settlement: the US and EU experience. In Y. Taniguchi, A. Yanovich, & J. Bohanes (Eds.), *The WTO in the Twenty-first Century: Dispute Settlement, Negotiations, and Regionalism in Asia*. Cambridge: Cambridge University Press.

Shea, D. (2019). Statements Delivered to the General Council by Ambassador Dennis Shea U.S. Permanent Representative to the World Trade Organization. Informal Process on Matters Related to the Functioning of the Appellate Body – Report by the Facilitator. (October 15, 2019). Retrieved from https://geneva.usmission.gov/2019/10/15/statements-by-the-united-states-at-the-wto-general-council-meeting/

Simon, L. (2021, 17 September, 17 September, 2021) *Personal Communication*.

Stasavage, D. (2004). Open-Door or Closed-Door? Transparency in Domestic and International Bargaining. *International Organization, 58*(4), 667-703.

Stockholm International Peace Research Institute. (2020). *SIPRI Military Expenditure Database*. Retrieved from: https://www.sipri.org/databases/milex

Syropoulos, C. (2002). Optimum Tariffs and Retaliation Revisited: How Country Size Matters. *The Review of Economic Studies, 69*(3), 707-727.

Tania, S. J. (2013). Least Developed Countries in the WTO Dispute Settlement System. *Netherlands International Law Review, 60*, 375-409. doi: 10.1017/S0165070X12001301

Tarp, M. N., & Hansen, J. O. B. (2013). Size and Influence: How small states influence policy making in multilateral arenas. *Danish Institute for International Studies, (DIIS Working Paper 11)*.

Tesfaye, H. (2021, 31 August) *Personal Communication*.

The World Bank. (2020a). *GDP (constant 2015 US$)*. Retrieved from: https://data.worldbank.org/indicator/NY.GDP.MKTP.KD

The World Bank. (2020b). *Population, total*. Retrieved from: https://data.worldbank.org/indicator/SP.POP.TOTL

The World Bank. (2021a). China trade balance, exports and imports by country 2019. Retrieved from https://wits.worldbank.org/CountryProfile/en/Country/CHN/Year/2019/TradeFlow/EXPIMP/Partner/by-country

The World Bank. (2021b). *Top Exporters and Importers by country 2019*. Retrieved from: https://wits.worldbank.org/CountryProfile/en/Country/WLD/Year/2019/TradeFlow/EXPIMP/Partner/by-country#

Thorhallsson, B. (2006). The Role of Small States in the European Union. In J. Beyer, S. Gstöhl, C. Ingebritsen, & I. Neumann (Eds.), *Small States in International Relations*. Washington: University of Washington Press.

Thorhallsson, B. (2019). Small States and the Changing Global Order: What Small State Theory Can Offer New Zealand Foreign Policymaking. In A.-M. Brady (Ed.), *Small States and the Changing Global Order: New Zealand Faces the Future* (Vol. 6, pp. 379-395): Springer.

Titievskaia, J. (2021). International trade dispute settlement: WTO Appellate Body crisis and the multiparty interim appeal arrangement. *European Parliament Think Tank.* Retrieved from https://www.europarl.europa.eu/thinktank/en/document.html?reference=EPRS_BRI(2021)690521

Understanding Regarding Procedures. Indonesia – Safeguard On Certain Iron Or Steel Products. In *WT/DS496/14*: (March 27, 2019).

United Nations Department of Economic and Social Affairs. (2020). *World Economic Situation and Prospects*. New York.

Väyrynen, R. (1971). On the Definition and Measurement of Small Power Status. *Cooperation and Conflict, 6*(2), 91-102. doi:https://doi.org/10.1177/001083677100600203

Vital, D. (2006). The Inequality of States: A Study of the Small Power in International Relations. In J. Beyer, S. Gstöhl, C. Ingebritsen, & I. Neumann (Eds.), *Small States in International Relations*. Washington: University of Washington Press.

Walker, D. (2019). *Informal Process on Matters Related to the Functioning of the Appellate Body – Report by the Facilitator, H.E. Dr. David Walker (New Zealand). JOB/GC/222.* Geneva: World Trade Organisation

Walt, S. M. (1987). *The Origins of Alliances*. New York: Cornell University Press.

Weber, D. (2021, 30 August). Personal Communication.

Weiler, J. H. H. (2001). The Rule of Lawyers and the Ethos of Diplomats: Reflections on the Internal and External Legitimacy of WTO Dispute Settlement. *Journal of World Trade, 35*(2), 191-207.
Wilson, B. (2007). Compliance by WTO Members with Adverse WTO Dispute Settlement Rulings: The Record to Date. *Journal of International Economic Law, 10*(2), 397-403. doi:10.1093/jiel/jgm013
Wolfe, R. (2020). Reform of WTO Working Practices. *Global Economic Dynamics*. Retrieved from https://www.bertelsmann-stiftung.de/en/publications/publication/did/reform-of-wto-working-practices
World Bank Group. (2004). *Global Economic Prospects January 2005: Trade, Regionalism, and Development*. Washington DC: World Bank.
World Trade Organization. Bangladesh and the WTO. Retrieved from https://www.wto.org/english/thewto_e/countries_e/bangladesh_e.htm
World Trade Organization. Briefing note: Small, Vulnerable Economies. Retrieved from https://www.wto.org/english/thewto_e/minist_e/min11_e/brief_svc_e.htm
World Trade Organization. China and the WTO. Retrieved from https://www.wto.org/english/thewto_e/countries_e/china_e.htm
World Trade Organization. Doha Round: what are they negotiating? Retrieved from https://www.wto.org/english/tratop_e/dda_e/update_e.htm
World Trade Organization. The GATT years: from Havana to Marrakesh. Retrieved from https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact4_e.htm
World Trade Organization. Understanding the WTO: What we stand for. Retrieved from https://www.wto.org/english/thewto_e/whatis_e/what_stand_for_e.htm
World Trade Organization. United States of America and the WTO. Retrieved from https://www.wto.org/english/thewto_e/countries_e/usa_e.htm#disputeCases
World Trade Organization. Who we are. Retrieved from https://www.wto.org/english/thewto_e/whatis_e/who_we_are_e.htm
World Trade Organization. Work programme on small economies. Retrieved from https://www.wto.org/english/tratop_e/devel_e/dev_wkprog_smalleco_e.htm
World Trade Organization. (2020a). Switzerland and the WTO. Retrieved from https://www.wto.org/english/thewto_e/countries_e/switzerland_e.htm#disputeCases
World Trade Organization. (2020b). WTO members discuss use of virtual platforms during COVID-19 lockdown. Retrieved from https://www.wto.org/english/news_e/news20_e/hod_17apr20_e.htm
World Trade Organization. (2021a). Honduras and the WTO. Retrieved from https://www.wto.org/english/thewto_e/countries_e/honduras_e.htm
World Trade Organization. (2021b). Technical assistance and training courses for 2020-2021. Retrieved from https://www.wto.org/english/tratop_e/devel_e/train_e/course_details_e.htm
World Trade Organization. (2021c). Technical Cooperation Handbook on Notification Requirements. Retrieved from https://www.wto.org/english/tratop_e/handbook_on_notifications_complete_e.pdf

Appendices

Appendix 1 State Size

Large States

Member State	Level of Development	2020 GDP (Constant 2015 USD millions)	2019 Population	2020 Military Expenditure (current USD millions)
Brazil	Developing	$1,749,107.03	211,049,530.00	$19,736.30
China	Developing	$14,625,051.77	1,397,715,000.00	$252,304.20
European Union (formerly EC)	Developed	$13,880,165.24	447,512,040.00	Not available
India	Developing	$2,480,916.38	1,366,417,750.00	$72,887.40
Russian Federation	In transition	$1,416,124.43	144,373,540.00	$61,712.50
South Africa	Developing	$303,722.45	58,558,270.00	$3,150.80
United States	Major developed economy (G7)	$19,278,194.00	328,239,520.00	$778,232.20

Figure 4 Large States. Sources: (Stockholm International Peace Research Institute, 2020) (United Nations Department of Economic and Social Affairs, 2020) (The World Bank, 2020a) (The World Bank, 2020b)

Middle States

Member State	Level of Development	2020 GDP (Constant 2015 USD millions)	2019 Population	2020 Military Expenditure (current USD millions)
Afghanistan	Least Developed	$21,546.41	38,041,700.00	$279.60

Argentina	Developing	$514,664.24	44,938,710.00	$2,907.20
Australia	Developed	$1,490,373.78	25,364,310.00	$27,536.20
Bangladesh	Least Developed	$267,730.91	163,046,160.00	$4,558.20
Canada	Major developed economy (G7)	$1,600,331.19	37,589,260.00	$22,754.80
Colombia	Developing	$299,660.61	50,339,440.00	$9,216.40
Democratic Republic of the Congo	Least Developed	$44,831.74	86,790,570.00	$362.10
Egypt	Developing	$412,246.05	100,388,070.00	$4,505.40
France	Major developed economy (G7)	$2,410,285.65	67,059,890.00	$52,747.10
Germany	Major developed economy (G7)	$3,434,435.99	83,132,800.00	$52,764.80
Indonesia	Developing	$1,027,602.85	270,625,570.00	$9,395.50
Italy	Major developed economy (G7)	$1,744,163.56	60,297,400.00	$28,921.30
Japan	Major developed economy (G7)	$4,324,540.89	126,264,930.00	$49,148.60
Kenya	Developing	$79,322.73	52,573,970.00	$1,106.20
Korea, Republic of	Developed	$1,618,916.73	51,709,100.00	$45,735.40
Mexico	Developed	$1,151,026.58	127,575,530.00	$6,116.40
Morocco	Developing	$104,662.11	36,471,770.00	$4,831.00
Nigeria	Developing	$493,917.97	200,963,600.00	$2,567.90

Pakistan	Developing	$323,802.76	216,565,320.00	$10,376.40
Philippines	Developing	$358,294.07	108,116,620.00	$3,732.70
Poland	Developed	$553,631.80	37,970,870.00	$13,026.70
Romania	Developed	$208,871.38	19,356,540.00	$5,726.80
Saudi Arabia, Kingdom of	Developing	$650,714.60	34,268,530.00	$57,519.40
Spain	Developed	$1,180,730.24	47,076,780.00	$17,431.80
Tanzania	Least Developed	$61,522.22	58,005,460.00	$659.30
Turkey	Developing	$1,015,023.49	83,429,620.00	$17,724.60
Uganda	Least Developed	$40,908.65	44,269,590.00	$984.80
Ukraine	In transition	$97,692.48	44,385,150.00	$5,924.20
United Kingdom	Major developed economy (G7)	$2,810,362.80	66,834,400.00	$59,238.50
Viet Nam	Developing	$258,508.67	96,462,110.00	Not available

Figure 5 Middle States. Sources: (Stockholm International Peace Research Institute, 2020) (United Nations Department of Economic and Social Affairs, 2020) (The World Bank, 2020a) (The World Bank, 2020b)

Small States

Member State	Level of Development	2020 GDP (Constant 2015 USD millions)	2019 Population	2020 Military Expenditure (current USD millions)
Albania	In transition	$12,555.06	2,854,190.00	$222.00
Angola	Least Developed	$105,625.09	31,825,290.00	$993.60
Antigua and Barbuda	Developing	$1,350.94	97,120.00	Not available

Armenia	In transition	$11,889.57	2,957,730.00	$634.00
Austria	Developed	$388,884.04	8,877,070.00	$3,601.60
Bahrain, Kingdom of	Developing	$32,768.11	1,641,170.00	$1,404.80
Barbados	Developing	$3,973.08	287,020.00	Not available
Belgium	Developed	$461,772.26	11,484,060.00	$5,461.20
Belize	Developing	$1,577.46	390,350.00	$24.50
Benin	Least Developed	$14,725.56	11,801,150.00	$71.80
Bolivia, Plurinational State of	Developing	$35,205.26	11,513,100.00	$609.00
Botswana	Developing	$15,345.55	2,303,700.00	$545.80
Brunei Darussalam	Developing	$13,438.58	433,290.00	$436.50
Bulgaria	Developed	$55,763.42	6,975,760.00	$1,247.20
Burkina Faso	Least Developed	$15,324.85	20,321,380.00	$382.50
Burundi	Least Developed	$3,218.73	11,530,580.00	$67.50
Cabo Verde	Developing	$1,632.00	549,930.00	$11.30
Cambodia	Least Developed	$22,981.54	16,486,540.00	$647.00
Cameroon	Developing	$36,438.48	25,876,380.00	$393.30
Central African Republic	Least Developed	$1,984.98	4,745,190.00	$41.30
Chad	Least Developed	$10,432.35	15,946,880.00	$322.90
Chile	Developing	$247,639.12	18,952,040.00	$4,600.70
Chinese Taipei	Developing	Not available	23,842,837.00	$12,154.50
Congo	Developing	$8,910.46	5,380,510.00	$298.40

Costa Rica	Developing	$60,975.39	5,047,560.00	$0.00
Côte d'Ivoire	Developing	$60,948.94	25,716,540.00	$607.20
Croatia	Developed	$51,376.69	4,067,500.00	$1,034.90
Cuba	Developing	$90,971.65	11,333,480.00	Not available
Cyprus	Developed	$22,861.84	1,198,580.00	$418.80
Czech Republic	Developed	$203,104.10	10,669,710.00	$3,252.50
Denmark	Developed	$327,737.53	5,818,550.00	$4,953.40
Djibouti	Least Developed	$3,207.81	973,560.00	Not available
Dominica	Developing	$455.62	71,810.00	Not available
Dominican Republic	Developing	$83,287.07	10,738,960.00	$599.10
Ecuador	Developing	$93,820.10	17,373,660.00	$2,243.50
El Salvador	Developing	$23,779.29	6,453,550.00	$372.30
Estonia	Developed	$26,269.35	1,326,590.00	$701.00
Eswatini	Developing	$4,314.46	1,148,130.00	$75.10
Fiji	Developing	$4,228.21	889,950.00	$73.50
Finland	Developed	$247,627.99	5,520,310.00	$4,087.50
Gabon	Developing	$15,259.86	2,172,580.00	$271.50
Gambia	Least Developed	$1,674.92	2,347,710.00	$14.80
Georgia	In transition	$16,664.07	3,720,380.00	$292.20
Ghana	Developing	$60,302.70	30,417,860.00	$239.90
Greece	Developed	$186,836.39	10,716,320.00	$5,301.40
Grenada	Developing	$1,018.38	112,000.00	Not available
Guatemala	Developing	$69,560.95	16,604,030.00	$342.80
Guinea	Least Developed	$12,922.78	12,771,250.00	$209.70
Guinea-Bissau	Least Developed	$1,218.76	1,920,920.00	$23.30
Guyana	Developing	$7,275.90	782,770.00	$66.00

Haiti	Least Developed	$14,930.97	11,263,080.00	$0.30
Honduras	Developing	$22,176.50	9,746,120.00	$402.70
Hong Kong, China	Developing	$311,574.45	7,507,400.00	Not available
Hungary	Developed	$139,695.32	9,769,950.00	$2,409.50
Iceland	Developed	$19,491.45	361,310.00	$0.00
Ireland	Developed	$392,377.01	4,941,440.00	$1,144.40
Israel	Developing	$337,006.22	9,053,300.00	$21,704.50
Jamaica	Developing	$13,410.85	2,948,280.00	$244.40
Jordan	Developing	$41,108.07	10,101,690.00	$2,077.00
Kazakhstan	In transition	$205,618.19	18,513,930.00	$1,732.90
Kuwait, the State of	Developing	$114,249.38	4,207,080.00	$6,941.00
Kyrgyz Republic	In transition	$7,238.14	6,456,900.00	$127.50
Lao People's Democratic Republic	Least Developed	$18,526.85	7,169,450.00	Not available
Latvia	Developed	$29,451.03	1,912,790.00	$756.90
Lesotho	Least Developed	$2,072.06	2,125,270.00	$38.00
Liberia	Least Developed	$3,077.68	4,937,370.00	$16.90
Liechtenstein	Developed	$6,268.39	38,020.00	Not available
Lithuania	Developed	$47,602.10	2,786,840.00	$1,170.60
Luxembourg	Developed	$63,990.50	619,900.00	$489.50
Macao, China	Developed	$22,295.57	640,450.00	Not available
Madagascar	Least Developed	$12,631.87	26,969,310.00	$87.40
Malawi	Least Developed	$7,558.87	18,628,750.00	$92.50

Malaysia	Developing	$343,624.87	31,949,780.00	$3,807.70
Maldives	Developing	$3,686.39	530,950.00	Not available
Mali	Least Developed	$15,765.84	19,658,030.00	$593.40
Malta	Developed	$12,886.27	502,650.00	$80.60
Mauritania	Least Developed	$6,887.11	4,525,700.00	$200.20
Mauritius	Developing	$11,469.22	1,265,710.00	$18.10
Moldova, Republic of	In transition	$8,508.96	2,657,640.00	$44.50
Mongolia	Developing	$13,368.02	3,225,170.00	$112.20
Montenegro	In transition	$4,055.19	622,140.00	$102.10
Mozambique	Least Developed	$17,946.66	30,366,040.00	$153.70
Myanmar	Least Developed	$66,290.02	54,045,420.00	$2,445.80
Namibia	Developing	$10,377.72	2,494,530.00	$373.80
Nepal	Least Developed Country	$29,966.14	28,608,710.00	$424.30
Netherlands	Developed	$808,007.36	17,332,850.00	$12,578.40
New Zealand	Developed	$202,712.04	4,917,000.00	$3,011.40
Nicaragua	Developing	$12,734.59	6,545,500.00	$78.00
Niger	Least Developed	$12,389.97	23,310,720.00	$239.50
North Macedonia	In transition	$10,609.99	2,083,460.00	$158.00
Norway	Developed	$403,779.73	5,347,900.00	$7,112.50
Oman	Developing	$72,219.18	4,974,990.00	$6,729.50
Panama	Developing	$52,504.13	4,246,440.00	$0.00

Papua New Guinea	Developing	$24,074.72	8,776,110.00	$85.90
Paraguay	Developing	$40,270.15	7,044,640.00	$364.30
Peru	Developing	$190,979.13	32,510,450.00	$2,633.10
Portugal	Developed	$205,052.99	10,269,420.00	$4,639.10
Qatar	Developing	$161,370.95	2,832,070.00	Not available
Rwanda	Least Developed	$10,807.19	12,626,950.00	$143.00
Samoa	Developing	$849.18	197,100.00	Not available
Senegal	Least Developed	$22,711.06	16,296,360.00	$393.00
Seychelles	Developing	$1,387.03	97,630.00	$18.80
Sierra Leone	Least Developed	$4,983.27	7,813,220.00	$23.80
Singapore	Developing	$330,099.80	5,703,570.00	$10,855.60
Slovak Republic	Developed	$94,173.79	5,454,070.00	$1,837.50
Slovenia	Developed	$48,124.69	2,087,950.00	$574.80
Solomon Islands	Least Developed	$1,467.40	669,820.00	Not available
Sri Lanka	Developing	$88,832.16	21,803,000.00	$1,573.70
St. Kitts and Nevis	Developing	$872.35	52,830.00	Not available
St. Lucia	Developing	$1,621.02	182,790.00	Not available
St. Vincent and the Grenadines	Developing	$776.41	110,590.00	Not available
Suriname	Developing	$4,491.08	581,360.00	Not available
Sweden	Developed	$534,451.93	10,285,450.00	$6,453.60
Switzerland	Developed	$740,026.24	8,574,830.00	$5,701.80
Tajikistan	In transition	$11,436.20	9,321,020.00	$80.40
Thailand	Developing	$432,703.38	69,625,580.00	$7,340.20

Togo	Least Developed	$5,187.64	8,082,370.00	$116.30
Tonga	Developing	$486.18	104,490.00	Not available
Trinidad and Tobago	Developing	$20,818.74	1,394,970.00	$157.40
Tunisia	Developing	$42,240.54	11,694,720.00	$1,157.40
United Arab Emirates	Developing	$388,768.91	9,770,530.00	Not available
Uruguay	Developing	$52,260.97	3,461,730.00	$1,163.60
Vanuatu	Least Developed	$784.55	299,880.00	Not available
Venezuela, Bolivarian Republic of	Developing	Not available	28,515,830.00	Not available
Yemen	Least Developed Country	$36,789.67	29,161,920.00	Not available
Zambia	Least Developed	$23,363.35	17,861,030.00	$212.10
Zimbabwe	Developing	$18,427.85	14,645,470.00	Not available

Figure 6 Small States. Sources: (Stockholm International Peace Research Institute, 2020) (United Nations Department of Economic and Social Affairs, 2020) (The World Bank, 2020a) (The World Bank, 2020b)

Appendix 2

Cases Studies for Legal and Economic Capacity

Dispute Number	Current Status	Consultations Requested	Defendant	Complainant	Outcome
2	Implementation notified by respondent	24-Jan-95	United States	Venezuela, Bolivarian Republic of	Successful
12	Settled or terminated (withdrawn, mutually agreed solution)	18-Jul-95	European Communities	Peru	Successful
14	Settled or terminated (withdrawn, mutually agreed solution)	24-Jul-95	European Communities	Chile	Successful
16	Settled or terminated (withdrawn, mutually agreed solution)	28-Sep-95	European Communities	Guatemala; Honduras; Mexico; United States	Partially Successful
24	Implementation notified by respondent	22-Dec-95	United States	Costa Rica	Unsuccessful
27	Settled or terminated (withdrawn, mutually	5-Feb-96	European Communities	Ecuador; Guatemala; Honduras; Mexico; United States	Partially Successful

	agreed solution)				
58	Compliance proceedings completed without finding of non-compliance	8-Oct-96	United States	India; Malaysia; Pakistan; Thailand	Partially Successful
72	Settled or terminated (withdrawn, mutually agreed solution)	24-Mar-97	European Communities	New Zealand	Successful
105	Settled or terminated (withdrawn, mutually agreed solution)	24-Oct-97	European Communities	Panama	Partially Successful
158	Settled or terminated (withdrawn, mutually agreed solution)	20-Jan-99	European Communities	Guatemala; Honduras; Mexico; United States	Partially Successful
177	Implementation notified by respondent	16-Jul-99	United States	New Zealand	Successful
217	Authorisation to retaliate granted	21-Dec-00	United States	Australia; Brazil; Chile; European	Partially Successful

				Communities; India; Indonesia; Japan; Korea, Republic of; Thailand	
231	Mutually acceptable solution on implementation notified	20-Mar-01	European Communities	Peru	Partially Successful
253	Report(s) adopted, no further action required	3-Apr-02	United States	Switzerland	Successful
254	Report(s) adopted, no further action required	4-Apr-02	United States	Norway	Successful
258	Report(s) adopted, no further action required	14-May-02	United States	New Zealand	Successful
285	Authorisation to retaliate granted	13-Mar-03	United States	Antigua and Barbuda	Unsuccessful
283	Implementation notified by respondent	14-Mar-03	European Communities	Thailand	Partially Successful
286	Implementation notified by respondent	25-Mar-03	European Communities	Thailand	Successful

326	Settled or terminated (withdrawn, mutually agreed solution)	8-Feb-05	European Communities	Chile	Successful
335	Implementation notified by respondent	17-Nov-05	United States	Ecuador	Successful
337	Report(s) adopted, with recommendation to bring measure(s) into conformity	17-Mar-06	European Communities	Norway	Partially Successful
343	Implementation notified by respondent	24-Apr-06	United States	Thailand	Successful
364	Settled or terminated (withdrawn, mutually agreed solution)	22-Jun-07	European Communities	Panama	Partially Successful
377	Implementation notified by respondent	12-Jun-08	European Communities	Chinese Taipei	Successful
383	Implementation notified by respondent	26-Nov-08	United States	Thailand	Successful
401	Report(s) adopted, with recommendat	5-Nov-09	European Communities	Norway	Successful

	ion to bring measure(s) into conformity				
469	Settled or terminated (withdrawn, mutually agreed solution)	4-Nov-13	European Union	Denmark	Partially successful

Appendix 3

Interview Questions

1. Could you explain a little about your role working with the WTO?
    a. Do you have experience working with the DSM?
2. In your experience do you think that disputes that include small states differ from those that don't?
3. What are the top 3 factors that help the effectiveness of small states in their disputes?
4. What are the top 3 factors that hinder the effectiveness of small states in their disputes?
5. On a scale of 1-5, how would you rate the effectiveness of the DSU for small states?
    a. What about for large states?
6. When going into/initiating a dispute, do you adjust how you act or your strategy when the defendant is a large, middle, or small state?